

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, NOVEMBER 12, 1998

Chairperson McLaughlin called the meeting to order at 9:30 a.m. at the Heathman Lodge, Vancouver, Washington. She introduced the members of the Commission and the staff present.

MEMBERS PRESENT:

LIZ McLAUGHLIN, Chairperson;
MARSHALL FORREST, Vice Chair;
EDWARD HEAVEY; **CURTIS LUDWIG**, and
PATRICIA L. HERBOLD.
Ex Officio Members **SENATOR MARGARITA PRENTICE** and
SENATOR RAY SCHOW

OTHERS PRESENT:

BEN BISHOP, Executive Director;
SHERRI WINSLOW, Deputy Director of Operations;
ED FLEISHER, Deputy Director of Policy and Government Affairs;
CALLY CASS-HEALY, Assistant Director of Field Operations
DERRY FRIES, Assistant Director of Licensing Operations;
BOB BERG, Assistant Director, Special Operations;
AMY PATJENS, Manager, Communications and Legal Services;
JACKI FISCHER, Financial Investigations Unit;
JONATHAN McCOY, Assistant Attorney General; and
SUSAN YEAGER, Executive Assistant

LICENSE APPROVALS

NEW LICENSES, CHANGES, AND TRIBAL CERTIFICATIONS

Commissioner Heavey moved to approve the new licenses, changes, and tribal certifications as listed in the agenda; **Commissioner Herbold** seconded the motion. **Commissioner Forrest** asked about the reinstatements. He wondered if most of those were failure to pay their license fee or to file something or were they reinstatements after some sanction or penalty has been imposed. **Mr. Fries** said the reinstatements here are the results of not renewing on time and there had been a time lapse. *Vote taken; motion carried with five aye votes.*

Commissioner Heavey said one of the groups was the Chicken Soup Brigade and asked what they do. **Mr. Fries** said they provide services for people with AIDS. **Director Bishop** said their establishment is located on 15th and Union in Seattle.

REVIEW OF FRIDAY'S AGENDA

Ms. Patjens said there are a couple of corrections to Thursday's agenda; the card room contracts, Paradise Bowl will not be on today's agenda. Added under "Other Business" will be an update on what is going on with the repayment of license fees, which was a result of the rule that was passed at the last Commission meeting. On Friday's agenda there are no staff reports. There are 17 rules that are up for final action, the first one is the record keeping requirements for the pull tab games that have carry over jackpots. There are 16 rules that deal with joint bingo games, and the rule about a moratorium on net return requirements should be up for discussion and possible filing. She said they had not seen that one before.

STAFF REPORT

NET RETURN REQUIREMENTS FOR CHARITABLE/NONPROFIT ORGANIZATIONS

Ms. Fischer said she would be going over the Commission's authority, net return history, and current regulations. The Commission's authority is established by the Revised Code of Washington. RCW 9.46.010 authorizes the raising of funds for the promotion of a bona fide charitable or nonprofit organization. RCW 9.46.0209 establishes the definition of a bona fide charitable nonprofit organization and in that RCW there are several things that each organization must meet, and she highlighted a couple of them for their consideration.

Ms. Fischer said this RCW basically states that a nonprofit organization must be operated for purposes other than gambling and requires that compensation to employees must be reasonable under prevailing wage scales. RCW 9.46.070 establishes the Commission's discretionary powers. Basically, it says that the Commission has the power to regulate and establish the maximum limitations on income derived from bingo. In establishing these limitations, the RCW says that the Commission must consider three areas: the licensee's nature, scope, and activities. The licensee's sources of other income and the percentage of gambling income that is used for charitable as opposed to nonprofit purposes. RCW 9.46.070 also specifically states that the Commission has the power to regulate and establish maximum limits for other expenses associated with the organization's gambling activities.

Ms. Fischer said that net return for charitable nonprofit organizations has been regulated since 1985. More recently, though, a moratorium was put on net return regulations and the agency's enforcement of those regulations. That was done in 1995. As part of that moratorium, the Commission established a task force, which was formed in February 1996 to study the factors that affect the licensee's ability to meet net return requirements. What she meant by that was they wanted to study the outside factors over which the nonprofits had no control. As part of their report, made several recommendations. In those recommendations it was evident that the task force had adopted the Commission's philosophy of the past that allowed some flexibility to licensees to meet their net return minimum percentage instead of imposing stringent requirements on expenses for each nonprofit organization. The final recommendations that are important to today's discussion were that the task force requested that the Commission decrease the net return percentage for all nonprofit organizations.

Ms. Fischer said the result of that was that licensee's averaged a 1-percent reduction in net return requirements. Also, the task force asked the Commission to include all gambling activities in the calculation of net return. Raffles conducted in conjunction with bingo games and amusement games operated at a gambling facility conducted by nonprofit charitable organizations were included in the net return percentage. It was recommended that the director be allowed to grant variances based on specific circumstances. Under current regulations, the director was allowed to offer both a general variance (for example, an ice storm) and a specific variance (for example, an individual licensee). The task force recommended the deletion of the regulation of prizes except in cases of abuse.

Ms. Fischer said new rules were implemented in January 1997. For the most part, those rules have been in effect with some few minor changes to them since that time. Licensees must calculate and monitor their net return both on a quarterly and an annual basis. On a quarterly basis, licensees must monitor the net return on their own and staff in the financial reporting services section also does some calculations there. Each quarter, licensees must evaluate their net return and if they are within 1 percent below the net return required for the quarter and year-to-date, they must evaluate their prices, prizes and expenses. If a licensee has more than 1 percent and less than 3 percent below the net return requirements, they must notify the Commission and submit a written plan of action to the Commission that is evaluated by staff. If a licensee is more than 3 percent below the net return required for the quarter, they must reduce their expenses to 20 percent of gross gambling receipts, reduce prizes to a level noted in the agency's WAC regulations and adjust their snack bar operations to ensure that it makes a profit.

Ms. Fischer said that on an annual basis net return is measured on the licensee's fiscal year. If a licensee is out of compliance with net return regulations, it may result in a reduction of the licensee's authorized gross receipts level for their next license period.

Commissioner Heavey asked what that would accomplish. **Ms. Fischer** said it makes the licensee really look at

their expenses and operations and gets a message across to them that they will not be allowed to continue to be out of compliance and compete against other operations of similar size. **Director Bishop** said the theory behind this idea was that there is only so much money available in a specific area for bingo. When the Commission decided to not limit how big a game could get, they wanted to ensure that the maximum return to the community would be achieved. A growing establishment that returns a higher percentage as they grow, improves the community.

Commissioner Herbold wondered why there would be an upper limit if the goal is to benefit the community with the proceeds from the gambling activities. She wondered why there are licenses that cut somebody off at a certain level. Why not let them make as much as they can as long as a fixed percentage is returned to the community for charitable purposes? **Director Bishop** said he had meant to say that. He gave the example of a specific community that has a maximum of \$6 million dollars available for bingo. **Commissioner Heavey** asked how that figure was arrived at. **Director Bishop** said the market determined it. **Commissioner Heavey** said that he thought that it had been established during his tenure on the Commission that money available for gambling is somewhat expansive. He said he didn't know what the gross income from bingo was in 1993, but he thinks it probably is twice that now. **Director Bishop** said that in 1995 it was \$202 million and in '98 it was \$194 million. **Commissioner Heavey** said he wasn't talking about bingo, he was talking about gambling which was \$2 billion. **Director Bishop** said that was absolutely correct.

Commissioner Heavey wondered what difference it would make how much money the establishments make if they are returning a certain amount of it to the community. He wondered what it accomplished if an establishment can't be licensed for \$5 million income because they're out of compliance on their net return and they are told that they now can only produce \$3 million. **Director Bishop** said he was sure that in today's market it does not accomplish much. It is the prime question that the Commission needs to consider. He said the situation they are in right now is whether an organization that returns \$1,000 shouldn't be allowed to do that as compared to one that can return \$1,000 out of \$1 million. Should they have that opportunity or should they be required as the rules do require them to say they must return \$50,000 out of that million? He wondered if the Commission should be involved in saying this organization cannot do the \$1,000.

Commissioner Heavey said he understood what he was saying, but that they were placing certain limitations on bingo that are not applicable to other charitable activities when they return on some of these activities according to what he has read in recent years, 10 to 15 percent of the gross goes actually to the charitable purpose.

Director Bishop said that punchboards and pull tabs are in the area of 5 percent and some organizations report that they lose money on it. **Commissioner Heavey** said that was a different issue – that's how much money they win. How much money you're letting people win in terms of the gambling activity, but the other activities are the ones who are selling tickets. They're not gambling. They're selling tickets and they return 10 percent. **Director Bishop** said he was not talking about gambling activities. He said they were imposing certain limitations on charitable organizations that produce their money by a gambling activity and those charitable organizations that produce their money by selling tickets or some other type thing. For example, people who go around and pick up things for these second hand stores. They get 50 cents a bundle.

Director Bishop said he thought the key was when the Statute was written, there were some very specific requirements. Ms. Fischer had alluded to those earlier that only apply to bingo. Specifically, the RCW says the Commission had the authority to limit how much income an organization could make. They didn't say they could limit how much they could make from punch boards or pull tabs or raffles or any other function, but specifically they did bingo. The same thing on the expenses that the Commission if it elected could limit the amount of expenses that an organization had to operate bingo but it didn't say anything about punch board or pull tabs.

Chairman McLaughlin said that she didn't think it would be a good idea if bingo exists just to provide good jobs for everybody there and to not have it matter how much money they return.

Ms. Fischer said if an organization does not meet the annual net return requirements, it could result in the denial of request to upgrade their license once it's been restricted or it could result in suspension or revocation of a license. Under the current rules, if a licensee does not meet the net return requirements, but maintains a positive cash flow from the gambling operation, their license is reduced to the level of net return actually achieved. However, there are a couple of limitations. If the Commission is going to restrict a licensee's license, then it is

restricted to reducing that level of gross receipts to one-half of the current gross receipts. With the first violation, the Commission has also regulated and said that they would only reduce their license class a maximum of two licenses. **Commissioner Heavey** asked if that were discretionary. **Ms. Fischer** said it depended on the net return percentage that they actually achieve. **Director Bishop** said it was discretionary from the point that it's by rule and the licensee can appeal to the Commission.

Ms. Fischer said the licensees who do not meet the minimum net return requirements and do not have a positive cash flow from their gambling operation are then supporting the gambling operation instead of the gambling operation benefiting the organization. The director will examine the last three months of operating results to see if the licensee has corrected this problem. If the licensee has corrected the problem, the license will be limited as was just discussed. If the licensee has not corrected the problem, the director has the authority to summarily suspend the organization's license. She showed a slide giving an overview of how net return is calculated for nonprofit organizations. First, they compute the bingo net return or income of \$100,000, pull tab net income of \$100,000. A hypothetical \$50,000 net income was made at the snack bar and amusement games made \$15,000 net income. She said this organization did not have a raffle that they conducted in conjunction with their bingo operation so then what staff does is to add back the local taxes because they are not included in this calculation. They divide that figure by the organization's bingo gross receipts of \$3 million, which resulted in a net return percentage of 10 percent. She said this organization did not meet their net return percentage because for a \$3 million gross receipts maximum, that license class is required to meet at 12 percent net return.

Commissioner Herbold asked what is deducted from the \$3 million gross receipts to get to the \$100,000 net income other than prize payout. **Ms. Fischer** said all of the expenses related to their gambling operation. Most halls allocate expenses for rent or light, utilities, wages, payroll taxes, bingo supplies, or punch board pull tab games – all of those expenses associated with running that bingo operation are deducted from the gross receipts. **Commissioner Heavey** asked if the \$3 million was their actual gross receipts and not the maximum. **Ms. Fischer** said that was correct. **Ms. Fischer** concluded by saying that this resulted in a 10 percent net return and this organization was out of compliance.

Chairperson McLaughlin asked if the statute states that a nonprofit bingo game can only operate three days a week. **Ms. Fischer** said yes, and this would have to be changed by the Legislature. **Commissioner Heavey** asked if there were any prohibition against two different organizations operating out of the same facility. **Director Bishop** said yes, if they operate on more than three different days. So, if two organizations operated on the same three days in the same facility, it would be fine, but they couldn't operate on four or six days within the same facility which is the law. **Commissioner Herbold** wondered what would happen if organization A operated on Monday, Wednesday, and Friday and organization B operated in the same facility on Tuesday, Thursday, Saturday, so they could share the rent. **Director Bishop** said that is against the law. An organization cannot conduct bingo at any location where bingo is conducted on more than three occasions. **Chairperson McLaughlin** asked if the staff has ever considered going to the Legislature and asking for a change. **Director Bishop** said they at one time did go forward and ask, but different members of their industry killed that provision.

Chairperson McLaughlin asked what about going to just four days instead of three, and not sharing their facility. **Director Bishop** said he did not know if that idea had been proposed. He said members of their own organization would probably be the best people to address that. **Commissioner Forrest** asked if it were the case that, because of the changing gambling environment, regardless of whether the Commission waives it or gives the director discretion, that the charitable and nonprofit organizations are going to have a declining gambling income and certainly not expansion – and really none of them deal with the root cause, which is that their pie is not expanding. The Legislature has to confront the fact that some revenues that help causes are going to be lost, or some major change has to be made. He doesn't see that any little tinkering with the rule is going to do much good and the underlying philosophy makes sense – that if all that a bingo operation does in a particular charity is pay the manager's salary and expenses, it doesn't seem to be advancing the cause very much. He understands the pattern that's started, but prefers a short-term effort. He thinks it is essentially a legislative decision and there is not much the Commission can do about it. He said they were going to have to either change the basic ground rules or resign themselves that charities are not going to be able to look on bingo as a significant source of income for their purposes. **Director Bishop** said there is little doubt that the pie has expanded in one case, but the charities' piece of it has declined. He said some statistics would be given

tomorrow about what has happened since the last task force. Such as, there are five or six additional tribal casinos open, the house banked card games started, the tribes have machine bingo within their facility now, and British Columbia gambling has expanded tremendously. Likewise, Oregon and Idaho have expanded and so there is no doubt that there are a lot of impacts. He said it was a basic philosophical question about whether an organization is only able to return \$10,000 or should they be required to return \$100,000.

Senator Prentice asked Director Bishop about the bingo rules that have been around since the beginning of the Commission. She thought it would be worth the Legislature's time to really focus on bingo itself rather than just an adjunct to all other forms of gambling. She said bingo and horseracing have an aging fan base, and before they fashion anything that they think is going to help bingo, they need to make sure that they are going in the direction of the current governor. He saw their last efforts as being an expansion of gambling and they need to be sure that when they do bring up something that they think might help, that it isn't going to be likely to be vetoed. She said she is committed to making sure that it gets attention and is studied.

Commissioner Herbold suggested that the staff study all of the rules that affect the nonprofits and try to simplify them. And, although the Commission cannot change the law, there may be some restrictive rules or complicated rules that make the computations very difficult and more time consuming for the staff than it needs to be. She suggested they think about removing these upper limits as long as a certain percentage of the gambling proceeds go to prize pay-outs and a certain percentage goes to the charitable purpose of that organization. She said that, after a little more than a year on the Commission, these rules might be unnecessarily complicated and that they could do something for the charities by way of simplifying them. **Director Bishop** said he certainly would welcome any simplification of the rules. **Chairperson McLaughlin** thought the charitable groups would like to work on something like that too.

Commissioner Heavey said he wants the staff to review with the nonprofit organizations how to make the machine available to the nonprofits. He would like to see if the rules could be amended to allow that kind of activity. **Director Bishop** said another area that the Legislature and/or the Commission might look at the machine-type of bingo that's currently being operated as Class II at the tribal facilities. He thinks that if it's legal for anyone within the state (such as the tribes), then it certainly ought to be legal for the charities. The federal law says it's legal. He said they hadn't actually looked at it and they are breaking some new ground with some of the things that are going on with the "Friendly Lawsuit." The Court decision actually forced them to take another look at the way they have traditionally examined the law. Under the new interpretation, it may be a way of doing it. **Commissioner Heavey** asked him to take a look at that also.

MANUFACTURER REVIEW

BETTINA CORPORATION, d/b/a BINGO MAGIC 2000,

Ms. Fischer said this organization has applied for a Class A manufacturer's license for the manufacture and sales of its electronic bingo dauber machine called The Bingo Magic 2000. Agents from the Financial Investigations Unit began their review during the latter part of September of this year. Their review included the onsite observation of the manufacturing process. Bettina has an assembly agreement with Trace Electronics who manufactures the Bingo Magic 2000 device. The applicant is aware that no sales of their product in Washington can occur until the agency's pre-licensing investigation of Trace Electronics is completed. Trace Electronics submitted their application for license on October 28, 1998 so that investigation has not yet been completed. The agency's investigation of Bettina Corporation included review of their corporate and financial records, verification of ownership and review of all shareholders and financiers criminal history. The company is primarily owned by Thomas Kellen, who serves as the corporation's president, secretary, and treasurer. His brother, William Kellen, has no ownership interest but is the company's primary financier. Bettina Corporation's registered agent is Frank L. Miller and the company holds licenses in both Texas and Kentucky. Based on the staff's investigation they recommend licensure of Bettina Corporation as a manufacturer

Commissioner Ludwig moved to approve licensing for Bettina Corporation, Inc. as a Class A manufacturer to conduct business in the state of Washington as recommended by the staff. **Commissioner Forrest** seconded

the motion. *Vote taken; motion carried with five aye votes.*

QUALIFICATION REVIEWS

SILVER BUCKLE RODEO CLUB,

Ms. Fischer said the organization was formed in 1978 to encourage and support the participation of youth in equestrian events and studies. Silver Buckle has 48 active members and conducted 12 meetings during their last fiscal year. The organization maintains two arenas and various livestock on a fenced 60-acre parcel in Vancouver, Washington. Through their rodeo skills program, they offer year-around classes for calf roping, pole bending, goat tying, and steer wrestling. As of December 31, for their fiscal year-end, the organization met its required net return percentage of 14 percent for its Class "K" bingo license by achieving an 18.5 percent net return. The organization's year-to-date net return is 21 percent as of June 30, 1998 and there are no pending administrative charges against the organization. The staff recommends Silver Buckle Rodeo Club be approved as an athletic organization and authorized to conduct gambling in the state of Washington.

Chairperson McLaughlin asked how the organization more than doubled their revenues from '96 to '97. **Cindy Arnold**, director of operations for the Silver Buckle Rodeo Club, said that in the fall of 1995, they built a new facility, which was larger than the old one. Because of that, in '96, their revenues rose which continued in '97. Unfortunately, even though it is still increasing, it is not increasing at the same rate that it was. They went from between 13 to 17 percent growth per year. Currently they are down to 5.8 percent. For third quarter they just barely made compliance with a 14.6 percent.

Commissioner Heavey moved to approve the Silver Buckle Rode Club as a qualified nonprofit organization licensed to conduct gambling in the state of Washington. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with five aye votes.*

BOYS AND GIRLS CLUB OF PIERCE COUNTY, Tacoma

Ms. Fischer said the organization's mission is to promote the leadership, character, health, and career development of Pierce County youth ages 6 to 18. These is done by offering daily programs in a safe and secure neighborhood facility and are designed to assist youth in developing self esteem, values and skills. For the year ending December 31, 1997, the club provided services to 6,418 children through six core program areas. As part of the personal and educational development program, the organization awarded \$17,000 in scholarships. Boys and Girls Club also prepared over 82,000 nutritious meals and offered these programs in leadership development, cultural enrichment, social recreation, and outdoor education.

Commissioner Forrest asked about the annual salary and benefits for the president seems extraordinary by their normal charitable operations. He wondered how it is decided how much is chargeable to gambling. If it says gambling management, does that mean \$190,000 for the president and CEO is chargeable to gambling or is that allocated between gambling and other responsibilities. **Ms. Fischer** said this individual is not the gambling manager. He is the executive director of the whole organization and this person holds a license in case the bingo manager isn't available on premises. They're required to have a bingo manager there when the gambling is going on so this individual could step in if necessary. **Commissioner Forrest** said that, in fact, running the gambling operation is not his major responsibility. **Ms. Fischer** said that was exactly right.

Chairperson McLaughlin asked if there is a percentage of his salary that's charged against bingo. **Ms. Fischer** said she would expect so, but she did not know the exact amount. She said they had a person whose primary responsibility is the gambling operation. **Commissioner Ludwig** said it seems pretty obvious that the CEO's salary isn't coming from gambling. He pointed out the \$40,000 went to the gambling manager and the balance to six other FTEs. He said he was still impressed that this is a charitable organization and they can pay the CEO almost \$200,000, which is more than they pay the Washington State Governor and some coaches at four-year

research universities. He said he doesn't think it really affects their gambling operation, but it's something that makes him very curious. **Commissioner Forrest** asked how much of his time they think is devoted to gambling and how much to other activities on behalf of the organization. **Commissioner Heavey** said he doesn't see any significant income coming from anything other than gambling activities. Ms. Fischer said this organization is a United Way organization and it received \$2.1 million from non-gambling related sources. **Director Bishop** said only 10 percent is from gambling.

Commissioner Herbold moved to approve the Boys and Girls Club of Pierce County as a charitable organization authorized to conduct gambling in the state of Washington. **Commissioner Forrest** seconded the motion. **Commissioner Heavey** asked if the staff has any idea how much the other nonprofit organizations pay to their managers. **Ms. Fischer** said this is the highest manager's salary the staff has seen. They have talked to the organization about this individual and he has a very specific contract with them that goes through December 31, 2001. The organization's board of directors voted on the contract and said that this individual has exceptional skills in that he worked in Arizona and increased Boys and Girls Clubs participation from 2,000 members to over 10,000 rather rapidly, so they felt that this was in the direction they wanted to go.

Vote taken; motion carried with five aye votes.

SEATTLE CASCADE BOOSTER CLUB, Seattle

Ms. Fischer said the organization was formed in 1974 and there are 18 active members. Their primary activity is to provide educational services through the funding and promotion of the Seattle Cascades Drum and Bugle Corps. Specific programs include A Corps, B Corps, and the Winter Color Guard. The Winter Color Guard consists of 40 youth divided into 3 units competing in different age and talent divisions. Because revenues were depleted during the last fiscal year, the Board of Directors elected to support only the Winter Color Guard during 1997. Since that time, all of their programs were re-activated and they had a very strong summer program. The organization met its required combined net return percentage of 12 percent for its Class "J" bingo license by achieving a 15.4 net return for the fiscal year ended September 30, 1997. Their year-to-date combined net return as of June 30, 1998 was 13.4 percent. The organization had excessive reserves and did not spend more than 60 percent of their gambling proceeds toward program services. A draft copy of the organization's financial statements for the fiscal year ended September 30, 1998, was recently reviewed and found to be in compliance with both the program expenditures and excessive reserves. There are no pending administrative charges against this organization. The staff recommends that Seattle Cascade Booster Club be approved as an educational organization and authorized to conduct gambling activities in the state of Washington.

Commissioner Ludwig moved to approve as an educational organization authorized to conduct gambling in the state of Washington; **Commissioner Forrest** seconded the motion.

Commissioner Herbold said they were reviewing this for the fiscal year ending September 30, 1997. She previously had asked why does the Commission look at these statistics so late, in this case they are in November of 1998, a year and two months after this fiscal year in question. She said the earlier answer was that the staff try to schedule the hearings to occur in the area where the organization is located. Commissioner Herbold said he knows that the Commission has been in the Seattle area within the past 14 months and she now wanted to know why this one is so long coming to them. **Ms. Fischer** said this organization's financial statements were received September 28, 1998. There was some delay with their CPA. Many nonprofit organizations go to CPA firms and ask them to do their write-up work for them at a time that's not busy for them so they can get discounted fees. And this organization had asked for an extension to submit their financial statements. Unfortunately, they had to request another extension because they still weren't finished; hence, the staff just received them. **Commissioner Herbold** said it seems they ought to be required to do it sooner. **Ms. Fischer** said the rules specifically state that the financial statements and qualification review materials must be submitted to the agency 120 days after the end of the organization's fiscal year. A lot of times, the organizations come to staff and say it costs nearly double the amount to get those statements done during the time that the Commission wants them because of the fees involved in hiring a CPA during the busy season. This organization requested an extension, the CPA firm didn't get it finished and that is why they are so late.

Commissioner Heavey asked if the staff had a reasonable basis upon which to conclude that they might not be in compliance. **Ms. Fischer** said no. **Commissioner Heavey** asked if staff had a reasonable basis to conclude that they would not be in compliance. **Ms. Fischer** said the staff's position has been not to evaluate whether they're going to be in compliance until they have the financial information. **Commissioner Heavey** said that it would appear to him that if they submit some rough draft of what they're going to do, then on that basis the staff could give them an extension. But without something of that nature, they should not be giving them extensions. **Director Bishop** said he thought that would be something that they should explore. **Commissioner Heavey** said that if there is no information that tells that they are either in or out of compliance, and likely to be in or out of compliance, then at that point staff should say they need something before granting them an extension. **Chairperson McLaughlin** thought that was a good idea and asked Ms. Fischer to make that a part of the consideration next time.

Vote taken; motion carried with five aye votes.

LAKE WASHINGTON YOUTH SOCCER PROGRAM, Bothell

Ms. Fischer said this organization emphasizes the development of self-esteem, good sportsmanship, fitness, achievement, teamwork, and skill development through playing the game of soccer. They served approximately 6,500 children, ages 6 to 18 during the 1997-1998 season and also trained more than 65 new referees. For the fiscal year ended March 31, 1998, Lake Washington Youth Soccer Association's combined net return was 11.9 percent, an increase of 8.1 percent from the previous year. The organization, however, still did not meet its required combined net return percentage of 14 percent for its Class "K" license. The organization's year-to-date net return percentage as of June 30, 1998, was 12.9 percent. They have submitted a request for a 2.13 percent variance from the net return requirements for their fiscal year ended March 31, 1997. A hearing has not yet been scheduled, but the organization has requested a hearing before the Commission, which will be scheduled by the compliance and hearings staff. The staff recommends Lake Washington Youth Soccer Association be approved as an athletic organization and authorized to conduct gambling in the state of Washington.

Commissioner Herbold asked why, in this case, the staff is recommending approval even though the organization has not met its net return requirements. **Ms. Fischer** said the net return requirement is not evaluated in determining whether the organization meets the RCWs in order to be qualified as a bona fide charitable nonprofit organization. The staff looks at whether the organization can hold the license. They may be doing something wrong, but that doesn't mean they can't hold a license. There are two separate and distinct issues that the staff looks at: 1) does the organization meet the minimum requirements under the law? 2) How does the net return affect them as far as their license class and they're punished that way? If not, their license is restricted through the net return process. **Commissioner Herbold** observed that this was the third year that they have not met their net return requirement and she wondered if that would be affected if their license class was lower so that their gross revenues from gambling would be lower and would that then bring them into compliance.

Ms. Fischer thought that the organization would probably say it wouldn't, but the hope is that they would adjust their expenses, adjust their wages, and adjust the days that they operate in order to come into compliance.

Commissioner Herbold said the organization has been out of compliance for three years. She wondered how long this noncompliance is allowed to continue. **Ms. Fischer** explained that under the regulations as long as the bingo game is making money for their organization, the staff does not summarily suspend their license. What will happen is their license will continue to be limited. This organization is within 2.3 percent and can appeal to the Commission for a variance. **Commissioner Herbold** said this is an example of a case where, as long as they are expending a certain amount of the revenue for the charitable purpose and not exceeding the percentage for supporting services, then that's okay. This brings her back to her earlier conclusion that why does the Commission what their net return is as long as a percentage of the income is going for their charitable purpose.

Ms. Fischer said that was something the Commission and staff must discuss.

Commissioner Herbold moved that the Lake Washington Youth Soccer Association be approved as an athletic organization authorized to conduct gambling activities in the state of Washington. **Commissioner Heavey** seconded the motion. **Commissioner Ludwig** said the only other possibility for noncompliance regarding net return or [inaudible] minimum net return of 14 percent would be to lower the licensee to Class "J", but based on

his understanding probably from some other discussions, that would mean they would already be at their maximum for this year and would have to go out of business. **Ms. Fischer** said that what happens is that the license year and the organization's fiscal year are actually six months apart, so their license is limited at the next license period. This organization's license this fiscal year ends in March. Their next license year begins October 1. **Commissioner Ludwig** said that whenever that happens, that is not preferable to make them close up and then reduce their income and stop the funds they are making to support the charitable programs. **Ms. Fischer** said that, in effect, if they got to the maximum of their license class, then they would have to close their doors until the next license year. **Commissioner Ludwig** said he was not suggesting that they do that because it seemed to be a very unfair, not beneficial alternative. **Ms. Fischer** said they had an alternative to demonstrate to the Commission they have met the net return requirements for the license class in which they would like to operate for a period of time, then they can go ahead and upgrade their license. Basically, it gives an opportunity to come into compliance and then demonstrate that they can meet the net return percentage of the license class they'd like to operate at. **Commissioner Ludwig** said they had increased every year for the last three years from 8 to 11 to 12 and hopefully they're making real progress. **Ms. Fischer** said she hoped that they do.

Vote taken; motion carried with five aye votes.

DEFAULT ORDER

LINDA TAYLOR, of Tacoma, Washington

Ms. Patjens said that Ms. Taylor was a distributor representative for Gasparetti's Distributing. Agents determined that she was violating the discriminatory pricing rules that say distributors must sell to operators at the same price. It's not okay to have a special price for operator A and not have that same price for operator B. They also must submit their price list to the Commission so that when they are out doing their inspections the agents can tell what to compare it to. Agents found that what she was doing was giving the reduced rate given if someone calls in an order to the distributing company, but she was giving that rate to people who had not called in. She had just shown up and made the sale right then, but she was still giving them that reduced rate. The charges were sent to her by certified mail and she signed for those. She did not request a hearing, so under the Administrative Procedures Act, the staff requests that a suspension be ordered for 30 days, which would be consistent with how they would have resolved the case had she requested a hearing. The only difference being that she probably would have been given the opportunity to vacate part of that suspension by paying a fine instead of actually serving the whole suspension. **Chairperson McLaughlin** said she got the impression that Ms. Taylor may have a history of doing this and wondered why there was only a 30-day suspension. **Ms. Patjens** said had other violations, but she has not previously been charged with this. This is her second offense. The staff recommends that an order of default be entered with a 30-day suspension.

Commissioner Herbold said she assumes that if distributor A charges different prices than distributor B, that kind of competition is okay. But distributor A, for whom this person is a representative, cannot charge a different price to operator 1 versus operator 2. She wondered if the staff knew whether this representative was following this same pattern for all operators or if she charged different prices. She said there's a distinction between the call-in price and the drop-off-out-of-your-truck price, but was she following the same pattern with all operators or was she playing favorites among operators? **Ms. Patjens** said it appeared from the agents' reports that if she had a good working relationship with a particular operator, then that is when she was giving the discount. She said there were a couple of instances in the order that were in the original charges. **Commissioner Herbold** asked if the staff knew whether she did that with all operators or just the ones that she reported to Ms. Patjens and that agents know about from competitors. **Ms. Patjens** said she believed the original person who called in was a competitor, but they have the sales invoices to verify the information. **Commissioner Herbold** clarified that the particular operators themselves did not complain because they were getting a good deal.

Commissioner Forrest said it's a little hard for him to see why this wouldn't be apparent to the employer. He wondered if there was some reason that he was overlooking. If there is a paper trail of the prices and price lists and so forth, why were they doing anything about the employer as distinct from the employee? **Ms. Patjens** said that he was correct in that it was the employer's responsibility to be overseeing what the employees do, and in

this instance, Gasparetti's Distributing also received administrative charges, which is the typical way the staff would handle that violation – that both the distributor and the representative receive the charges. **Chairperson McLaughlin** asked if they paid a fine. She asked why it was Linda Taylor and not them. **Ms. Patjens** said it was Ms. Taylor because she did not request a hearing and if they don't, then the staff must ask for a default order. The distributor requested a hearing and that case has already been settled. **Director Bishop** pointed out that she is no longer working for Mr. Gasparetti.

Commissioner Ludwig moved to enter the default order; **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with five aye votes.*

Chairperson McLaughlin introduced ex officio member, Senator Ray Schow. **Senator Schow** asked what the price difference is between buying product off the truck or coming in to make the purchase. **Director Bishop** said it could be significant. He said the last he recalls it was about 10 percent discount regarding whether it was a walk-in or a delivery. He said he thought the distributor representatives themselves are paid a commission between 5 and 10 percent. **Chairperson McLaughlin** asked what difference it makes and why is it the business of the Commission. **Ms. Patjens** said the original concern was that by allowing this type of competition to continue, it might result in only one big distributor. The concern with only having one distributor was that might allow operators and distributors to develop a relationship where that was the only place they could get the product from. And if that was the case, there might be an increase in collusion where the distributor would find out that pull tabs had been somehow changed, and that would result in fraud against the public. **Director Bishop** said the overriding factor is that this goes back to the entire pricing issue that was discussed last year. By not having a set price, it provides an opportunity for someone to provide influence to the business in regulated gambling activity. Whether that could occur, there are no cases of it to date.

CARD ROOM CONTRACTS UNDER APPENDIX C – HOUSE BANKED PILOT TEST

WIZARDS RESTAURANT, Burien

Ms. Cass-Healy said this organization is a new commercial restaurant, lounge, and card room. They currently have a Class D pull tab license and a Class E-5 card room license. They are owned by Wizards Restaurant LLC. Gary Murray holds 32.1 ownership interest and New Highline Lanes Inc. holds 32 percent ownership interest, KNCS at Management Inc. holds almost 17 percent ownership interest, R&R Asset Management Inc. holds another 17 percent and Dana Strombo holds 2.5 percent ownership interest. The organization submitted a request to participate in the house banking test program on May 15, 1998. They are requesting approval to conduct house banked card games with 15 tables including six house banked blackjack, two progressive blackjack, two Let It Ride, two Caribbean Stud, two Pai Gow poker and one Draw poker. Special agents reviewed their internal controls and conducted the pre-operations inspection along with the pre-operations inspection checklist. It was determined the licensees' operations are in compliance with all the requirements of Appendices B and C. The internal controls appear to be functional as stated in their internal controls submission. Based on this review, approval to participate in the Commission's house banking card room test as a Level II, Phase I, operation is recommended.

Commissioner Herbold asked if this organization or a "sister" organization on the list again for a second card room down the road. **Ms. Cass-Healy** said yes, and the other one is number 22 right now.

Chairperson McLaughlin asked how close the staff is to permanent rules. **Ms. Cass-Healy** said they are being worked on right now. They are supposed to come to her and Sherri Winslow's desk in December. They are trying to meet the February agenda deadline and the January study session. **Commissioner Heavey** said it would be useful if the rules included something that required somebody to be on premises at all times to admit Gambling Commission agents into the surveillance room and failure to do so results in immediate suspension. **Commissioner Ludwig** said that he should also include Commission agents and local law enforcement. **Ms. Cass-Healy** said that would be done.

Commissioner Heavey moved to approve Wizard's Restaurant of Burien in the Commission's pilot test program

for house banked card rooms. **Commissioner Ludwig** asked if they needed a waiver of the six months license requirement. **Ms. Cass-Healy** said they requested a waiver and it was approved on August 31, 1998. **Commissioner Herbold** seconded the motion.

Vote taken; motion carried with five aye votes.

BIG AL'S CASINO, Everett

Ms. Cass-Healy said this organization is a new commercial restaurant and card room. They have a Class A pull tab license and Class E-5 card room license. Dine Gaming LLC holds 90 percent of the ownership interest in Big Al's. Teresa Wright and Allison Williams each hold 25 percent of the Dine stock, Michael Tong and John Law each hold 14 percent and Terry Dean holds 13 percent. The remaining 10 percent of the business is held by four individuals all with immaterial percentages of stock. Big Al's Casino submitted a request to participate in the house banking test program on December 10, 1997. They're requesting approval to conduct house banked card games with 15 tables, nine blackjack, 2 progressive blackjack, 2 Caribbean Stud, 1 Let It Ride and 1 Pai Gow poker table. Special agents reviewed Big Al's internal controls and conducted the pre-operations inspection. Based on the review, it was determined the licensee's operations are in compliance. Approval to participate in the Commission's house banking card room as a Level II, Phase I operation is recommended.

Chairperson McLaughlin asked if this was an existing card room. **Ms. Cass-Healy** said they were just licensed. **Commissioner Herbold** asked if this would require a waiver of the six-month operating requirement, or because they made the request back in December of '97, this does not require a waiver. **Ms. Cass-Healy** said a waiver is required if they haven't been operating, which they haven't. **Chairperson McLaughlin** asked how an establishment could get a waiver if they haven't been operating before. **Ms. Cass-Healy** said they could have brought in experienced card room employees from other card rooms. The staff evaluates the operations to make sure that they have the necessary experience before they are permitted to go forward.

Randy Williams from Big Al's casino said that everyone in the organization has extensive experience in the Washington State casino environment. He was the casino manager for the Nooksack River Casino and the Emerald Queen Casino. Other casinos where they have gained experience is at the Muckleshoot Casino and Las Vegas casinos as well. **Commissioner Heavey** asked him if he were Native American and **Mr. Williams** said he was from an Alaskan Tribe. **Commissioner Herbold** asked how recently he received a license. **Mr. Williams** said he received it on Tuesday. **Commissioner Herbold** said his six-month waiver, then, is a couple of days. **Director Bishop** said that in this particular case there is a caveat in the rule that allows that experience in tribal casinos counts for operating card rooms. **Commissioner Herbold** said she understood that, but not waiving the six-month operating rule in lieu of previous card room experience. **Director Bishop** said experience in tribal casino management counts. **Commissioner Herbold** said that in other cases it's not been tribal casinos; it's been experience in other state or other jurisdictions. **Director Bishop** said he didn't think they had yet issued one for experience in other states. **Commissioner Herbold** said it seemed to her they had, but the issue was not about experience in other states. She was concerned about the very, very short time between the issuance of a license on Tuesday and two days later this is being approved based on experience. She said she understood experience goes a long way, but wondered what ever happened to the six months. She asked Mr. Williams if he had come before the Commission before in connection with another card room. **Mr. Williams** said it was in connection with tribal casinos.

Commissioner Ludwig moved to approve the contract with Big Al's Casino for house banked card rooms. **Commissioner Forrest** seconded the motion. **Commissioner Herbold** said she would be voting no because she thinks the experience is a factor to be considered in the waiver, but in this case it is the only factor, there's no operational experience at all. *Vote taken; motion carried with four aye votes; Commissioner Herbold voted nay.*

Mr. Williams thanked the staff for their assistance and support. He said they had been very helpful and it was a pleasure for them to work with an organization that's supportive and provides some professional support and they

appreciate it.

RIVER BEND CASINO, Spokane

Ms. Cass-Healy said this organization is a commercial restaurant, lounge and card room located in Spokane. They currently have a Class B pull tab license and a Class E-5 card room license. There are six stockholders. James Lynass with 28 percent, Ole Styrvold, 23 percent, Sharon Avery, 20 percent, Hui Nguyen, 10 percent and Samuel Brock, 10 percent. They submitted a request to the Gambling Commission to participate in the house banked program and submitted their internal controls on August 26, 1998. They request approval for six tables. Four are house banked and two are non-house banked poker tables. Their internal controls submission was reviewed by special agents who also conducted the pre-operational inspection. Based on the review, it was determined the licensees' operations are in compliance. Approval to participate in the house banked card room test as a Level II, Phase I operation is recommended.

Commissioner Heavey moved to approve. **Commissioner Forrest** seconded the motion.

Commissioner Herbold asked the same question about when they began operation, when they were licensed. **Ms. Cass-Healy** said they have been operating since July 22, 1998.

Commissioner Ludwig asked if anyone from the City of Spokane was present. There was not. He then asked the potential licensees why they were only asking for six tables at this time rather than the 15 everyone else in Spokane seems to be asking for. **Jim Lynass**, general manager of the River Bend Casino, said the reason they are only asking for six tables is due to the expense of going into the house banked program. They are small investors and they hope to start small and add tables as they can afford to.

Senator Prentice asked what happened to the initiative in Spokane to ban casino gambling. **Mr. Lynass** said it didn't get enough signatures to go on the fall ballot.

Vote taken; motion carried with five aye votes.

FIESTA BOWL, Richland

Ms. Cass-Healy said this is a bowling center with a punch board pull tab Class D and Class E-5 card room license. The organization is a family-owned and controlled partnership held by Mark and Leo Frank. They recently submitted a request to participate in the house banked test in May of 1998. The Fiesta Bowl is requesting approval to operate a total of nine tables. Six tables of house banked blackjack, two tables of progressive blackjack, and one table Let It Ride. Special agents reviewed Fiesta Bowl's internal controls and conducted a pre-operation inspection. Based on the review, it was determined that the licensee's operation was in compliance with all of the requirements of appendices B and C and the internal controls were functional and state in the submitted document. Based on these results, staff recommends that the Fiesta Bowl be approved to participate in the house banked card room test as a Level II Phase I and they have been operating for more than six months.

Commissioner Ludwig moved to approve. **Commissioner Forrest** seconded the motion.

Commissioner Herbold asked if they were doing a waiver of the six months. **Ms. Cass-Healy** said they were not doing a waiver because they have been operating since before May.

Commissioner Ludwig said he had gone down the list of applicants and he wondered if there were any card room employee applicants, but there were none and he wondered if that meant that all of their potential employees that will be working when they open up house banked card games are already licensed. **Dave Costa**, general manager of Hollywood Bowl which is one of four bowling centers, two of which are in Portland and

two in the Tri Cities area, said that that was a good question but he could not answer that question.

Commissioner Ludwig said he was just trying to protect him from falling into a trap where they receive approval and then they find out that there are a bunch of dealers who aren't licensed or don't have an application pending and he was just wondering what his status was. **Mr. Costa** said he has visited the facility himself on two or three different occasions and to his knowledge all of their dealers have been licensed. **Mr. Fries** pointed out that some of the applications are transfers that came in and there also may be previous licensees of a casino or they may be licensed from other establishments. Some of them may have applications pending and they can go to work after a 20-day period so they may not have a license in their possession, but there are applications pending for Fiesta Bowl.

Vote taken; motion carried with five aye votes.

HOUSE BANKED PILOT TEST – PHASE II REVIEWS

DRIFT ON INN, Shoreline

Ms. Cass-Healy said this organization consists of card room, lounge and restaurant. John R. and Karen Mitchell, husband and wife, are sole proprietors of the company. They entered the card room enhancement program on August 9, 1996. The licensee submitted a request to participate in the house banking test program in August of 1997. Final approval of this was given in June of 1998. The licensee is currently operating 15 tables including two Let It Ride, two Caribbean Stud, two progressive blackjack and nine blackjack. The maximum wagering limit is currently \$25. The Phase II review consisted of the review and observation of gaming operations, the review of closed circuit television systems, review of the cashier's cage, review of gaming and organizational records, law enforcement and tax authority inquiries, review of the count room controls, key controls. On October 8, 1998, an exit conference was conducted at the license premises. The licensee was cooperative and agreed to make all necessary changes requested to correct violations identified by the review team. Based on the review, staff recommends the decision to improve implementation to level II phase II status for the Drift On Inn, effective December 11, 1998. All violations noted in the case report have been corrected.

Commissioner Forrest moved that the Drift On Inn be approved Phase II operation. **Commissioner Herbold** seconded the motion.

Commissioner Heavey said he thought that the Commission had decided that they would not approve somebody in advance of the time they were eligible to be approved and it appears that this organization is not eligible to be approved until December 11th. **Director Bishop** said it takes six months of operation. **Ms. Cass-Healy** said this had been done one other time and she thought it was based on the fact that all violations were corrected and they would not be eligible to go forward again until January. **Chairperson McLaughlin** asked if the reason this is being done ahead of time is because there is no Commission meeting in December. **Ms. Cass-Healy** said yes. **Chairperson McLaughlin** said she believed that if the staff checked the record before, the Commission had said they would not do that again. **Ms. Winslow** said that two organizations had come before the Commission with approval contingent on their six months operation occurring so they couldn't go to phase II until a specified date. She said she thought one was Freddie's Club and there was one other, which are precedents. She said that when they had talked in the past about not bringing somebody forward, it was someone with violations and bringing something forward on a contingency basis. She said this licensee had corrected everything so that was why it was brought forward. **Chairperson McLaughlin** clarified that, although the vote is taking place now, it wouldn't be approved until December 11, 1998. **Ms. Winslow** said that was what the recommendation should be.

Commissioner Ludwig said he thought this issue should really be clarified following the vote.

Commissioner Heavey said the rules were made for a reason. It says six months of operation and this is not six months of operation. **Ms. Cass-Healy** said the organization has been operating for over six months, but they are supposed to wait for six months after operating under Phase I before they go to Phase II under Appendix C and that's what they are talking about here. **Chairperson McLaughlin** said, based on what she has been told that

they will not be able to go on to appendix C until December 11th, she would vote aye, but she thought that should be clarified and not happen again. **Ms. Cass-Healy** said she understood that.

Chairperson McLaughlin announced that the *vote taken; motion was carried with three aye and two no votes (Commissioners McLaughlin, Ludwig, and Marshall voted yes; Commissioners Heavey and Herbold voted no).*

Director Bishop clarified that the rule says they must have operated six months before staff starts their review to see if they can go. He asked if that was what he was hearing.

Commissioner Heavey said he thought that was what the rule said. That they had to be operating as a banked card game for six months before they were eligible to be approved for phase II and this is five months.

Commissioner Ludwig said he thought that would not necessarily mean they couldn't start their review prior to the six months. **Commissioner Heavey** said his understanding was that they could ask anytime they want, but they have to have six months of experience to be sure that they are operating appropriately before they can be approved by the Commission. **Chairperson McLaughlin** apologized to Drift On Inn and asked if there was someone present who could clarify matters for the Commission.

John Mitchell, Drift On Inn, said his organization has been operating a card room for five years. **Commissioner Heavey** said they had not been operating as a house banked card game. **Mr. Mitchell** said they approved the blackjack where the player puts the quarter up and drop it in the box and went back and counted it. He said they had a similar situation before the new pilot program came into effect. **Chairperson McLaughlin** said she was sorry she had not called on him before the vote.

OTHER BUSINESS / GENERAL DISCUSSION / COMMENTS FROM PUBLIC

Director Bishop said a rule was passed last month to repeal the fee increase that went into effect July 1, 1998. He said they had been holding back some of the applications that they could to prevent having to give refunds, but they have now gone through the process of reviewing all that they have received. They will be refunding approximately \$100,000; \$75,000 of that should be mailed by next week. There were some refunds that were more complicated, but those, too, will be back to the licensees in the next couple of weeks or so. The total amount of revenue that was reduced was a little over \$200,000

Chairperson McLaughlin asked if there were any other comments.

Tom Humphrey, with Double Down Saloon, Inc, owned by Michaels Development Company, gave an update on a new facility that is having a grand opening this weekend in LaCenter, Washington. The company is owned by Ruth Michaels, recently widowed, who lives in Brownsville, Wisconsin, where she and her four sons run their principle company and business, a construction company. He said they bought the Double Down Saloon from J. K. Duncan and applied for a license under the enhancement program and that license was granted. The facility has been open for almost 30 days and employees 120 Washington residents. Annual payroll is \$1.5 million, the facility has 11 table games. There are only two affiliates of the company who are not Washington residents, one of whom is himself and the other is Matt Daly who oversees some other gaming development projects for Ms. Michaels. He said the two out-of-staters live in Las Vegas because they are three hours by air from their projects in Kansas, Arizona, and Washington. None of the money invested in this facility comes from Las Vegas or Nevada. They have no operating projects in Las Vegas or Nevada and they do not plan to have any. All key employees have moved up here and are now residents in the Vancouver area. They have so far invested more than \$3 million, which has gone for the purchase of the land, remodeling the building, lawyers, accountants, surveyors, engineers, and other professionals as they draw up that particular project.

Chairperson McLaughlin asked if this is the project that wanted to hook the two buildings together. **Mr. Humphrey** said no, but there are two buildings on the site. They have authority to operate in both facilities, but they have never proposed to hook the two together because they had understood when they bought them that that wasn't permitted, so that has never been part of a plan. Of the 120 employees they've hired a little more than 20 percent were unemployed when they were hired. Of that, about 5 percent were welfare recipients of one kind

or another. Twenty-five percent of their employees have participated in their training programs to enhance their skills. Thirty percent are single parents. They've been active in the community. LaCenter has something called "Our Days" every summer. They've made a significant financial contribution to that. They allowed them to use their site for a staging area for their parade. At Halloween-time the City sponsored two haunted houses -- one for teenagers and one for younger kids -- they have a house on their property and they have converted that into a haunted house for the little kids. They have been approached by an organization in Vancouver to participate in providing meals and money to fund activities for homeless people for Thanksgiving and Christmas and they have agreed to do that. He said that they hoped that anyone who has received invitations and are free this weekend would come and join them and see the facility.

Commissioner Ludwig asked if he changed the name to Double Down. **Mr. Humphrey** said yes, the name was previously J. K. Duncan, Inc. He had used the name "Cactus Jacks" and they changed it to Double Down Saloon, Inc. He said the other one was called "The Yellow Rose" and it will now be called "The Place." The second facility was an older building that they had actually anticipated opening first, but even though the building has been there since the early 20th century, as they got into it, their engineer suggested they make some changes and that's what they're in process of remodeling.

Chairperson McLaughlin called for the executive session to discuss litigation and said the meeting would reconvene at 1:30 p.m.

RECESS

WASHINGTON STATE GAMBLING COMMISSION

MINUTES
SPECIAL COMMISSION HEARING
FRIENDLY LAWSUIT/TRIBAL-STATE CLASS III GAMING
THURSDAY, NOVEMBER 12, 1998

Acting-Chairman Forrest called the meeting back to order at 1:30 p.m. at the Heathman Lodge, Vancouver, Washington.

MEMBERS PRESENT: **LIZ McLAUGHLIN, Chairman; and**
 MARSHALL FORREST, Vice Chairman;
 EDWARD HEAVEY;
 CURTIS LUDWIG; and
 PATRICIA L HERBOLD.
 Ex Officio Members SENATOR RAY SCHOW, and
 SENATOR MARGARITA PRENTICE

OTHERS PRESENT: **BEN BISHOP, Executive Director;**
 SHERRI WINSLOW, Deputy Director of Operations;
 ED FLEISHER, Deputy Director of Policy and Government Affairs
 CALLY CASS-HEALY, Assistant Director of Field Operations
 DERRY FRIES, Assistant Director of Licensing Operations;
 BOB BERG, Assistant Director, Special Operations;
 AMY PATJENS, Public Affairs Manager;
 JACKI FISCHER, Financial Investigations Unit;
 JONATHAN McCOY, Assistant Attorney General; and
 SUSAN YEAGER, Executive Assistant

Chairperson McLaughlin said that the Commission is now on agenda item number 11, which is the consideration and vote on proposed compact amendments. She announced that this is referred to as a "Friendly Lawsuit." She called for a motion.

Commissioner Heavey moved to approve the compact amendment; **Commissioner Prentice** seconded the motion.

Commissioner Ludwig moved to adopt an amendment to the Appendix X as agreed upon by the tribes and the Governor. He read the amendment to Appendix X of the proposed tribal lottery system, or "Friendly" Lawsuit. In Section 5.11, under Networking Requirements, at the end of the section, the words, "and the Governor" are added. In Section 12.1, the number of player terminals was changed from 500 to 425 allocation entitlement. In Section 12.2, the number of player terminals is decreased from 750 to 675. **Chairperson McLaughlin** called for a vote on these amendments.

Commissioner Herbold said she still thinks the number of machines is too high because one of the reasons gambling is available to tribes is to help enhance their economic development. She said some of the tribes are in locations or in financial circumstances where casinos don't work for them. She said this compact amendment and the machines that are able to be allocated does help some of the tribes in terms of being able to sell or lease to some of the tribes that do have casinos, but because of the high numbers here, she thought some of the smaller tribes are not going to be able to sell their machines because there's a finite market for gambling and the total number of machines that are permitted under this amendment are such that the larger tribes will buy what they know the market will bear, but she thought some of the smaller tribes would still be left out and this wouldn't be the economic development solution that some of them might be looking for.

Commissioner Forrest said he agreed with Commissioner Herbold and it seems to him that a lot more is known

now about the market since the time the first compacts came to be. He said in his home county, the Lummi Nation had to close their casino for lack of business. He said the benefit of hindsight gives an opportunity to ensure that the underlying purpose of IGRA, which is to give the tribes the resources to do the good things that many of them are now able to do for their members would give them a chance to spread that out rather than just make the prosperous casinos more prosperous. He would like to ensure that those with either no casinos or mildly prosperous casinos have an opportunity to share the economic benefits of tribal gaming. This was an opportunity to ensure that the smaller tribes are able to have a piece of the pie. His recommendation is that this agreement go back for more negotiations to reduce the number of machines substantially. He also pointed out that he didn't want to do anything to tie the hands of future legislatures. If a future Legislature wanted to abolish the State Lottery, then the Legislature should have that right. The reason for that is that he thinks gambling policy ought to be set by the Legislature, which sets policy for the state. Whatever the merits are of how it got here, the future should be up to them. The Governor is to be commended for negotiating with the tribes in earnest. But he thinks a further reduction on the number of machines would help the smaller tribes, and then they would be able to do for their people what the larger tribes in more urban areas are able to do for their people.

Senator Schow said that he will vote no on this amendment because he still has great concerns about the process. The Legislature's meeting was held last Friday and, since then, changes have been made in the compact, and the Legislature won't have an opportunity to comment on this and that isn't the way the process is supposed to work. He sees an issue with limiting the number of machines to 1,500. If the object of IGRA is to allow the tribes an opportunity to become economically independent, he hates to see the government say, "you can go this far and then you have to stop." The number of machines should be based on what the market will handle.

Senator Prentice said there has been plenty of discussion about what the market will bear, and the Gambling Commission isn't here to ensure that everyone makes a profit. The tribes have also learned lessons about marketing and it isn't only location, but also how they market their casino. Her concern about the number is that the number was negotiated by the tribes and the Governor, and that's what they agreed on. She was not present at the negotiations, but the change is extremely modest. What has complicated this is that the "Friendly Lawsuit" negotiations have been going on for a long time. Not only with the Gambling Commission and the tribes, but also with the Attorney General's Office.

Commissioner Herbold said she agrees with what Commissioner Forrest said about this really tying the hands of the Legislature, and she has been uncomfortable all along about the Commission being asked to determine whether or not these machines are legal. The Legislature or a court ought to make that decision. She said the explanation of the difference between the proposed machine and a slot machine seems like a distinction without a difference. She said the expert yesterday who testified that he thought the machine was legal, when pressed, said, "Well, that's kind of a technical opinion, it's not a legal opinion." She said the Attorney General's Office told the Commission that this machine could be legal, but only a court can decide what is legal. She said she did not think it was the Commission's role to decide the legality of this machine. She said the lawmakers of this state are the Legislature and for the Commission to tie their hands with a compact amendment that doesn't give them any options, she thought was a wrong role for the Commission to play. Either the Legislature or a court decision should make those decisions and not the Commission, so she concurred in the thoughts that Judge Forrest shared earlier.

Chairperson McLaughlin called for the vote on the amendment to the compact amendment. *Vote taken; motion carried with 5 ayes; 2 nays (Commissioner Herbold and Senator Schow voted nay).*

Chairperson McLaughlin said the issue on the table now is the amended compact amendment. She called for discussion. **Commissioner Herbold** moved to amend the compact amendment so that the compact, in its entirety, would provide that if the laws of the state of Washington are changed in the future, that the tribes would be bound by those changed laws whether that be by the Legislature, the vote of the people, or a court decision.

Chairperson McLaughlin asked Mr. McCoy if it's legal for the Commission to bind another government. **Mr. McCoy** said that any amendments at this juncture would be in the nature of a rejection of the compact as it exists and would require that the Commission return the compact to the negotiators with instructions on that basis.

Commissioner Forrest seconded the motion.

Commissioner Ludwig said it seems to him that, after carefully listening to Commissioner Forrest on his concern about no provisions in the original compact, that would bind the parties to adhere to any subsequent change in the law. He said he thinks he appreciates why that kind of a bargain could never have been struck initially, given the investment that the tribes had to put into entering the compact and opening a casino under the compact. At the same time, that compact language in the existing compact would also govern the amended compact that they would be dealing with if this proposed overall amendment passes and he thinks that absent some kind of agreement with the tribes, which he is convinced would never happen, to be bound by whatever the Legislature might say, they did provide for a procedure to have that issue resolved by the Court. In that regard, the tribes have waived their sovereign immunity and that's a big move on their part. What the overall existing compact in its present form or as amended is that it suggests a good procedure for resolving that issue if it happens in a manner perhaps recognizing that if there ever be much chance at all of getting all of the parties to try and reach an agreement at the outset. He said he thought the provision set out in the original compact providing for waiver of sovereign immunity and a judicial resolution is about the best the Commission can hope for.

Commissioner Heavey asked what would happen if the Legislature abolished bingo. **Mr. McCoy** said the requirements of the Indian Gaming Regulatory Act are that the state is required to negotiate for any activity which is authorized for any purpose for any person under state law. The authority for a tribe to conduct that activity under IGRA requires that it both be legal under state law and that there be a compact covering it. The position the agency took in the original negotiations and have maintained throughout -- from the state's perspective -- is that if the Legislature were to entirely prohibit an activity, for example bingo, then that activity would no longer be authorized under the Indian Gaming Regulatory Act. Because it wasn't authorized under the Act, that was the basis for the provision that gave the agency an opportunity to litigate that issue and for them to litigate it and that was the position the agency took. They had a disagreement -- the agency essentially put a clause in the compact that said the agency agreed to disagree and this is how that disagreement will be resolved. **Commissioner Heavey** said that he imagined the tribes took the position that once approved, it remains approved regardless of the status of the state law.

Mr. McCoy said the tribal position taken during the negotiations initially was that once it had been incorporated in the compact, then the compact would govern, not state law, and the state's position was that it requires two components -- one, that it's in the compact and also that it be authorized under state law. There is very little case law dealing with the issue. The closest case is a case out of Idaho involving the state of Idaho changing their statutes. In Coeur d'Alene Tribe vs. Idaho, the state of Idaho changed the constitution and the statutes prohibiting certain activities. However, it was before the compacts were entered into and the Court only ruled with regard to whether they were essentially vested at the time that they began negotiations, or at the time the compact was entered into. So that the direct issue was not addressed, but the analysis of the Court was that there was nothing in IGRA that prevents a state from changing its state laws. He said they took some comfort from that, but that that did not directly address the question that Commissioner Heavey asked. So at present, there is no case authority that directly addresses that question, although that situation is also apparent in Wisconsin where the constitution was changed to outlaw the activities that were included in their compact.

Commissioner Heavey wanted to know what happened in Wisconsin. **Mr. McCoy** said that in Wisconsin there has not yet been a resolution because their compacts were for a period of years and the attorney general took the position that that issue was not ripe until such time as the compacts expired. In the state of Washington there is no expiration period. The state has taken a position with regard to negotiations. The state's legal position is two pronged: that it has to be legal under state law and if that prong disappears as a result of state legislation then the activity will be illegal and therefore not authorized by the compact. **Commissioner Heavey** asked if the way the compact amendment is written provides for a remedy in state court. **Mr. McCoy** said it would be in federal court. **Commissioner Heavey** said they have just waived their sovereign immunity. **Mr. McCoy** said that was correct. The state agreed that they would litigate that in federal court. **Commissioner Heavey** clarified that the state does not have to rely upon any other agency to pursue that litigation. **Mr. McCoy** said that was correct. That would be a direct right of the state and in fact there is a provision of the IGRA that provides for federal court jurisdiction. For a state to enjoin any activity that's in violation of the compact, which is the reason why it was worded the way it was, is that the state's position is that the compact no longer authorizes it because the state structured it so that

the compact only authorizes those activities that state law authorizes. So if the state law no longer authorizes it, it's the state's position that the compact no longer authorizes it and therefore they can litigate that issue in federal court. **Commissioner Heavey** clarified that that has been in all the state's compacts previous to this. **Mr. McCoy** said that was correct. **Commissioner Heavey** said that this is no different than what they have done in previous cases. **Mr. McCoy** said that was correct and in fact the provision that Commissioner Forrest was referring to was, he believed, in the regular compact, but since this is an amendment to that compact, that provision would also apply to this activity. **Commissioner Heavey** said the Commission had made its mistake some time ago.

Senator Prentice asked Mr. McCoy if she was correct in her thinking that the state got tribal casinos because they had "Reno Nights" – that was the basis of it – but even if the state did away with that, there are now card rooms and enhanced card rooms and the state would have to eliminate all of that also in order to get to the point where the state could say, "Sorry, no more tribal casinos." **Mr. McCoy** said the case law is very clear at this point that it is on a game-by-game basis. And that is under the Rumsey decision, the Coeur d'Alene decision and there's a Tenth Circuit case as well, The Shining River Sioux Tribe. All three of those cases, as well as Judge Van Sickle's decision in the Washington case, relied on the proposition that it's a game-by-game analysis, so if, for example, Reno Nights were eliminated, that would still authorize other activities – if any person is authorized to that activity, then the tribe is authorized to do that. It puts them on the same basis as any other person including the states. **Senator Prentice** said that, in terms of imagining that the Legislature would ban all of the things that they have just spent a lot of time talking about, she said that if a tidal wave inundates them then it's all gone anyway, so they could spend a lot of time wringing their hands about what they should or should not have done, but nevertheless, this is where they are now – they're enhancing card rooms all over the place, so she thought it was hardly worth even spending any more time talking about, "Well, what do we do to wipe them out?" She thought they were where they were. **Mr. McCoy** clarified what he was saying that it would be possible to eliminate a particular activity and the state's position under the compact, that that particular activity would no longer be authorized and he said he thought that addressed what Commissioner Forrest was discussing.

Senator Schow said his concern is, as Commissioner Ludwig pointed out, he can see why this may be necessary because of the tremendous investment in building a casino. His concern is that at the same time the state is allowing the private sector to invest hundreds of thousands of dollars into a facility to build enhanced card rooms and his question is would they be in the same situation as the tribes? If one has an investment and its protected because they were already there when the change comes, would someone else be protected if the change came and their investment was there? **Mr. McCoy** said that's a fairly complicated legal issue, but the general rule would be that the Legislature is not bound to authorize an activity. It can prohibit an activity. There may be a question with regard to whether that is a taking or not. He said he did not know if it would necessarily bear on this particular question, but typically when an activity is outlawed there's some sort of wind-down period. How long that is depends on whether the Legislature provides a sunset for the activity. **Senator Schow** said, due to the fact that part of the Commission's job is to regulate gambling and to some degree make these decisions to keep things fair for everybody, he said he did not think it was the Commission's job to tip it in one direction or another. This compact, as it stands now, is almost law, if in fact, the Commission is changing a procedure that normally would be the job of the Legislature to set that policy. He said he wanted to make sure the Commission was not getting on a slippery slope where future Commissions or contracts that somebody else negotiates start taking the place of the Washington State Legislature.

Commissioner Ludwig said another reason he sees for urging the commissioners to vote against Commissioner's Herbold's motion to amend is that unlike the earlier motion that he made, the 12 tribes have not agreed in advance to sending it back for that proposed language or amendment. They have agreed, during a meeting with the Governor to the considerations or content of the amendment that he proposed. In other words, voting for Commissioner Herbold's amendment would be tantamount to rejecting the compact and sending it back for further negotiation. He said a vote on this would be just like voting to reject the compact in its proposed form.

Commissioner Heavey said he was making the assumption that the Legislature, for instance, authorized fundraising casino nights and then they took the position that casinos were no longer legal in the state of

Washington, then the tribes could not run roulette and some of those other games that are associated with casinos. Without this amendment, he wanted to know who enforces the remedy to that which is to prohibit those games in the casino without that provision in the compact. **Mr. McCoy** said that at present, the tribes that the state has compacts with would have authority under the IGRA to bring an action to enjoin any activity the state alleged was in violation of the compact. **Commissioner Heavey** asked if that was under the compact or under IGRA. **Mr. McCoy** said there's a provision of the IGRA that authorizes the state to bring an action against a tribe or any other person that's operating Class III gaming in violation of a compact. In the absence of a compact, that authority is exclusively with the federal government, the U. S. Attorney's Office. This is the reason why -- with regard to the Shoalwater, the Spokane, and the Colville cases -- those were all brought by the U. S. Attorney's Office because none of those tribes has a compact. With regard to any violation that the state alleges if they have a compact with the tribe and they're operating in violation of that compact, then the state would have the authority to take that action in federal court. This also incorporates a waiver of tribal sovereignty so that's not even an issue to be litigated. **Commissioner Heavey** said that Mr. McCoy said that under IGRA they could do it anyway. **Mr. McCoy** said that he could also point out the IGRA also authorizes tribes to bring suits against states and they found that that provision is not applicable against the states.

Commissioner Herbold said that she is not suggesting that all tribal casino gambling be banned. She said her concern is that, because of her doubts as to the legality based on the different information they had, and if the Legislature, at some future date, were to rule specifically or would pass a law specifically banning this type of machine, she thought this was their opportunity to strengthen the compact amendment so that the Commission is not usurping the power of the Legislature or creating a litigious circumstances where the only way it's going to be resolved is through long, drawn-out litigation.

Commissioner Heavey said he wanted to clarify one thing to be sure that all of the Commission would not be doing something that says "Send this back for further negotiations." **Commissioner Heavey** asked Jerry Levine, attorney for the tribes involved in the "Friendly Lawsuit," if he has authority to answer questions on behalf of the parties of the lawsuit that led to this compact amendment. **Mr. Levine** said he was lead counsel for the parties in the litigation; however, he is not sure that this would be strictly within that authority. He said he has opinions. **Commissioner Heavey** asked if the tribes that were party to the lawsuit at the initial and then subsequently joined the lawsuit object to the amendments that were proposed and approved by Commissioner Ludwig. **Mr. Levine** said that the amendment before the Commission identified as 5.11, 12.1, 12.2, and 12.4, were agreed upon by the tribes and the Governor.

Commissioner Heavey said he just wanted to be sure they were not in the position that Mr. McCoy said that they would be by amending this without approval of the tribes. He said he just wanted to be on the record that the Commission is not doing that so they don't have to send this back for negotiations. His second question is based upon his answer to the first question, Mr. Levine has no authority to make any comment with regard to whether the tribes approve or disapprove making this amendment subject to state law. **Mr. Levine** said he could make a representation that it is his belief for what that's worth in the position in which he stands that 5.11, 12.1, 12.2, and 12.4 are acceptable to the tribes. **Commissioner Heavey** said he was talking about Commissioner Herbold's amendment. **Mr. Levine** said he thinks they would oppose Commissioner Herbold's amendment. They would regard that as outside the scope of what they had been doing. Commissioner Heavey said he just summarized her amendment by saying that these things are subject to state law -- that that would be the gist of what her amendment does and Mr. Levine seemed to be saying that he has no authority. **Mr. Levine** said he would have no authority to change the underlying compact or make any representations that the tribe are prepared at this time to renegotiate the underlying compact and that's what would be required.

Commissioner Ludwig said he believes that Commissioner Herbold's motion is out of order, because, with the exception of the one he made which was negotiated prior to today between the Governor and the tribes, the Commission is not here to amend the compact. They must reject it or approve it.

Commissioner Heavey said that, while he is not in agreement with Commissioner Herbold's motion, he said her amendment in effect says, send this back for renegotiation and this is the provision that we want negotiated, but he thought it was in order, but it is as Commissioner Ludwig said, a rejection of the proposed compact amendment. **Commissioner Forrest** said the question was either the Commission accepts with the little minimal

amendments to the proposed amendment to the compact. If not, then there's going to be further negotiations. He said the Commission cannot unilaterally say what it's going to be – anything would have to be product of negotiations. This is the existing amendment before the Commission. He thought it did not make any difference.

Chairperson McLaughlin asked if there was anyone who needed to have the amendment restated. No one responded and she called for the vote on the amendment.

Vote taken; motion failed. **Forrest and Herbold** voted aye; **Schow, Heavey, McLaughlin, Ludwig and Prentice** voted nay.

Chairperson McLaughlin called for the vote on the amended compact amendment.

Commissioner Heavey said he is reluctantly voting for this provision because he feels it is a substantial expansion of gambling in the state of Washington. He said that the machines that have been described and will be approved in this process opens up the possibility and the probability that there will scratch tickets like these – not the lottery part of it – in the next few years will be approved for in the taverns, in bingo halls, in card rooms, and many casinos now will become major casinos. He said he thought that that would be what they were going to be seeing because this scratch ticket machine is a distinction without a difference. It's a slot machine, but technically it's not a slot machine so therefore it's not a slot machine. He supposed it was like saying "All collies are dogs, but not all dogs are collies." He thought that was probably what they were seeing. He said he really did not like it.

Commissioner Heavey said he is gratified that the Governor did reduce the number of machines. He thought the number of machines should be limited to 300 because that would force the major casinos to negotiate with the smaller tribes and give them some income from these machines, but when he ran some numbers, he figured that there are 26 tribes in the state with 675 machines which is a total of 17,550 machines that can be authorized. If there are five tribes going to be in a position where they're going to negotiate and lease machines to some other tribes, that creates a potential of 3,375 machines for these five tribes. Those five tribes would be authorized to have 3,775, so that means that they have to lease another 3,800 machines from smaller tribes. That's a help to the smaller tribes. He said he did not think that was a significant help, but it is a help. He would have liked to have seen the number different. That's why he thought 300 would be a better number. He agrees with Senator Schow in that the limit of 1,500 machines probably should be market driven, because that would create an additional opportunity for leasing machines from smaller tribes and therefore improve the economic well being for those smaller tribes such as the Shoalwaters.

Commissioner Heavey said he is caught in a bind on this. He is a strict interpretation person. The law is the law. You follow the law. Even though it may be socially beneficial, you don't bend the law in order to accomplish the social benefit; you change the law. He thinks this process is bending the law in order to accomplish the social benefit of which he does approve. He thinks our nation and our state has ignored the economic well being of the tribes. They have become economic second class citizens as a result and he thinks that the IGRA was an effort to do that. If he had his druthers, he probably would look at the possibility of creating some sort of activity that they could engage in that nobody else could do and then improve their economic well being, but that's not something that's either politically or socially acceptable, so he reluctantly goes along with this.

Commissioner Heavey said he wishes that the Commission would have approached it in a way that was more logical and understandable to the public. They know they have voted against slot machines 60 to 40 percent on two occasions even when they were offered a reward for voting for them, they still voted against them. He thinks that the public will come to the conclusion that that vote was insignificant because there are now slot machines. He said he will be voting for this because the policymaker of the state, which is the Governor, has indicated that this is good public policy or at least acceptable public policy, and because he is not a policymaker he is going to vote for it. He said he will also encourage the Commission to make this sort of activity available for another the nonprofits, because if it is available for one governmental agency for social purposes, then the nonprofits who serve a significant function in the state as a alternate governmental activity should also have this available to them.

Commissioner Forrest said he can understand and empathize with the frustration on the part of the lawyers and tribal officials who have participated in these long arduous negotiations. To think they have a deal and then suddenly it comes and they find the commissioners arguing about it. He said he thought that he heard when he attended one negotiating session that the Commission was not giving directions to the director or to Mr. Pharris in those negotiations. This is the commissioner's first chance to express their views and what would be desirable. That's a little legalistic and if anyone who has been in the trenches thinks they have something after all this time, he wants them to understand that he has had a chance to express his views both about his concerns about future legislative authority, and second, his views that a lower number of player terminals per tribe would overall give a greater benefit to the Native American population of the whole state of Washington by ensuring a little more "revenue sharing" from the tribes with prosperous casinos to those without.

Chairperson McLaughlin said she thinks one point has been forgotten. The tribal negotiators are in a similar position – they must return to their tribes who also have not had a chance to express their views on this as well. Apparently, they got the thumbs up signal from their constituents because they are all sitting before the Commission waiting for a decision. She said she doesn't see this as much of an expansion. She said it is a change. If they are popular, they will be used. If they are not popular, obviously they won't be. They are very expensive. They saw that a tab reader costs \$8,200. She also feels that the games they are discussing – the lottery and the scratch tickets could be in the casinos right now, but they would be run by personnel rather than by the machines, so the Commission has okayed since she has been on the Commission, Let It Ride, Caribbean Stud and Pai Gow, and they are talking about satellite or linked bingo. Changes are taking place all the time. She said the big expansion from the public's eye, the supposed mini casinos or the enhanced card rooms, and the Legislature spoke on that – they said they could have 15 tables and then the next year it was the house banked card games and she said she was all for the house banked card games because they could be regulated. She said the market will regulate it as much as anything.

Commissioner Heavey said he heard an old wag that said "today's solutions are tomorrow's problems."

Chairperson McLaughlin said she heard complaints that "governments run too slow" and her response was "They just ought to be glad it does."

Senator Schow said he has also had a hard time with this. He said he's going to vote for this because he feels that the negotiators have set down and worked it out. He said he is disappointed in what they've negotiated though. He fears that what they have done is to give another false hope for what's going to help tribal casinos. What they've done is imitate a slot machine and whether it will provide the same enjoyment as the old-style slots, remains to be seen, but he has his doubts.

Chairperson McLaughlin called for each vote and because this is an Indian compact and the ex officio members have the right to vote.

Senator Prentice	aye
Commissioner Ludwig	aye
Commissioner Forrest	nay
Senator Schow	aye
Commissioner Herbold	nay
Commissioner Heavey	aye
Chairperson McLaughlin	aye

The vote is 5 to 2 in favor of the compact amendments.

OTHER BUSINESS

Chairperson McLaughlin called for any comments.

Stan Jones, Chairman of the Tulalip Tribes thanked the Commission for voting this way. He said what they were

really voting for was putting his people to work. He said they had 50 percent tribal and non tribal employees. He said they would be laying a lot of the people off from welfare and they would be trained in four weeks to come to work for the casinos which pays about \$15 per hour. He reminded the Senators that they would be creating good jobs and he thanked them for their vote.

Chairperson McLaughlin announced an executive session.

MEETING ADJOURNED

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, November 13, 1998

Chairperson McLaughlin called the meeting to order at 9:30 a.m. at the Heathman Lodge in Vancouver, Washington. He introduced the WSGC staff and Commission members at the head table.

MEMBERS PRESENT: LIZ McLAUGHLIN, Chairperson;
MARSHALL FORREST, Vice Chair;
EDWARD HEAVEY; CURTIS LUDWIG, and PATRICIA L. HERBOLD.
Ex Officio Members SENATOR MARGARITA PRENTICE, and
SENATOR RAY SCHOW

OTHERS PRESENT: BEN BISHOP, Executive Director;
SHERRI WINSLOW, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy and Government Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
BOB BERG, Assistant Director, Special Operations;
AMY PATJENS, Public Affairs Manager;
JONATHAN McCOY, Assistant Attorney General;
and SUSAN YEAGER, Executive Assistant

APPROVAL OF THE MINUTES FROM THE OCTOBER 8-9, 1998, MEETING

Chairperson McLaughlin asked if there were any changes to the minutes from the October 8 and 9, 1998, Commission meeting held in Silverdale. There were no changes. She said the minutes stand approved.

RULES FOR FINAL ACTION

RECORDKEEPING REQUIREMENTS FOR PULL-TABS GAMES WITH CARRY-OVER JACKPOTS

Ms. Patjens said this was a rule that the Gambling Commission staff was proposing in conjunction with the Washington Civic and Charitable Gaming Association (WCCGA). She said that currently jackpot prizes are not recorded until they're paid out. If there were a \$500 jackpot prize that was won, the operator on the day it was won would record the amount of the prize. She said the organizations would prefer to record or a portion of the prize would accrue on a monthly basis. Instead of recording the \$500 when the prize has been won, perhaps the operator would have already recorded a couple of hundred dollars and then when the prize was actually won, they would record whatever amounts were left. This would be a new format for recording these so they would recommend that the rule only apply to bingo operators who have a Class "F" or bigger license. Also they would have to get approval from the director to use this accrual method. Staff recommends final approval.

Commissioner Herbold moved to approve this rule change and her motion was seconded.
Vote taken; motion carried with four aye votes (Commissioner Heavey was not present at this time).

LOCATION OF BINGO GAMES/JOINT BINGO GAMES

Ms. Patjens said that in 1995, Jon McCoy, Assistant Attorney General, had been asked for an opinion on whether the Gambling Commission could authorize joint bingo games or whether it needed to be changed by the Legislature. Mr. McCoy answered that it could be by rule, but a Legislative change would be a little bit of a cleaner approach. In 1997, there was a bill that passed the Legislature that was partially vetoed by the Governor and in 1998, there was a short legislative session and it did not pass.

Ms. Patjens said that after that, the staff received a couple of letters from the Legislature that were signed by a number of legislators asking the Commission to look into authorizing joint bingo games by rule. They were aware of the 1996 opinion that this was a possibility. At that, Commissioner Forrest asked the staff to put a rule on the agenda to generate some discussion on this. That rule is in their packets. After the Commission filed the rule and there seemed to be some support for the concept, the staff formed a task force with the Commission's staff as well as representatives from the industry and put this rule package together. Commissioner Forrest suggested that they send a letter to the Governor's office to inform him that the Commission was considering this. They had heard informally that – and the license group had heard this – had the bill gotten to his desk last year after session, that there was a pretty good chance that he would sign it. The staff has notified the Governor's Office and asked for a response.

Ms. Patjens gave an overview of each rule. Item 4A explains how joint bingo games would be conducted. It is very similar to how bingo currently operates only now there would be linked bingo prize providers, which are the companies who provide the link-up equipment for the different bingo operations. A linked bingo prize provider would have to receive approval from the director before allowing an new operator to participate in a game that offers the linked bingo prizes so they would be very aware of which organizations were doing this. The numbers would be drawn at one bingo location and then displayed to all other bingo halls that are participating in the game, probably on the form of some type of a big screen where they would then see what numbers had been drawn.

Ms. Patjens said Item 4B defines the linked bingo prize providers, which are the businesses that provide the bingo operators with the means to link the bingo prizes together. The rule states that they may provide equipment, supplies and give management advice, but they may not assume the ultimate responsibility for the bingo operation. Item 4C defines the linked bingo prize provider representatives, which are similar to the distributor representatives that they currently have. They are just a person who's acting on behalf of the linked bingo prize provider. Item 4D defines the three difference categories of prizes that there are with these games. The first one is a main prize which is prize that is paid out to the first verified winner, then there would be a consolation prize which would be a prize which would be given out at each individual bingo operation, and lastly there is a bonus prize that is the prize that would be given out when a player achieves a certain winning pattern and a predetermined number of calls as the gentleman was speaking about earlier.

Item 4E deals with the licensing of representatives and 4F deals with the licensing of the bingo prize providers. Item 4G sets out what the fee would be for the linked bingo prize provider, which is an annual fee of \$3,693. Item 4H deals with the inspection service stamps and one 40-cent stamp would be required for every 250 cards. These stamps that are put on these so that if there are any problems they can easily be tracked. The stamp is purchased from the Gambling Commission. Items 4I, J, and K are record keeping requirements. Item 4L deals with the quarterly activity reports that a linked bingo prize provider has to submit to the Gambling Commission very similar to the way that other licensees have to submit a report to the Commission on a quarterly basis. Item 4M deals with agreements that restrict the freedom to buy and sell and generally agreements like that are prohibited, but there is an exception to this – that they can have an agreement like that for the specific bingo prizes for the specific bingo cards. Item 4N deals with what information has to be recorded on when there is a winner like this and you have to require – or all information has to be recorded, including all of the names, addresses, et cetera. Item 4O deals with when the licensee can get rid of the unsold cards and also allows a way that cards could be reissued, assuming that they haven't been opened. Item 4P is the last rule, and this is the rule that's been on the agenda for quite some time that defines where the bingo game is considered to be conducted which is where the bingo cards are sold and the winners are determined. So again, these are up for final action today and she said she was available for questions.

Commissioner Ludwig wanted to know what the reason was for the exception to the general rule that this deals with. **Ms. Patjens** said it had more to do with the fact that with this type of game, it would make sense that you

would only be able to buy the bingo cards from the one particular provider. **Ms. Winslow** said they must control the cards during the whole sales process because when they determine what the prize is, it's based on the sales amount so they have to control it from the point of manufacture specifically to the actual game in operation and they make a determination on what the prize amount is and then they return all the cards, so they must have absolute control over it. **Commissioner Ludwig** said that would give them control even over the cards sold to the player and they would be able to count that. **Ms. Winslow** said that was correct.

Chairperson McLaughlin said she overlooked earlier under calling for public testimony under Recordkeeping Requirements for Pull-Tab Games and she asked if anyone wished to speak against this rule. There being none, she called for a motion.

Commissioner Herbold moved to adopt the rules set forth as Items 4a through 4p. **Commissioner Forrest** seconded the motion. **Commissioner Heavey** said they had discussed this previously [mic is fading here] he thought the discussion focused around putting the discretion with the director as opposed to putting the discretion with [fading here and missing words] games to be played. His question was [fades out] to three linked bingo prizes per day and he needed to ask a question with regard to that also, but first he wanted to know if there were some magic to this three per day. **Ms. Patjens** said she thought the three per day was a little bit more of what staff had anticipated and then when they were working with the industry and the study group sessions, they had said, "Well, maybe we would like to be able to more than three a day." Then there was the whole discussion about, "Well, should we allow that to have the director's discretion, or is that something that should come back before the Commission?" Her impression from the minutes was that Commissioner Forrest had some concerns about that – that maybe that type of decision ought to be coming back to the Commission instead of having that reside with the director. She thought three, from what the industry has said, would be an amount that would allow them to get this up and running and see if they need more than that, but she thought that would in part be something that would be market driven. **Ms. Winslow** said staff provided a summary on some of the issues that were pointed out by the industry and that's in handout packet #1 under tab 4 summarizes what their justification would be to have more than one game per day. **Chairperson McLaughlin** asked what had happened to one game per day when it was called satellite bingo. **Ms. Winslow** said the main issue as it was explained to them was they were concerned that some of the people that originally wanted to participate in the joint bingo games were not necessarily going to continue to participate because they were concerned about costs and so forth, so with the reduced number participating, the costs were going to have to be shared by fewer people; therefore, they thought they would have to run more games.

Commissioner Heavey wanted to know if there is a problem because the rule is no more than one prize per game in a bingo activity. **Director Bishop** said yes, and that could be a problem. He thought an alternative would be allowing prizes in more than three games. **Commissioner Heavey** said that in addition to that, if what they are talking about is the Commission letting them start with three, and then if they can convince the Commission they can go to more than three. The way it is worded requires going through the rule amendment process in order to get more than three games, so it would appear to him that there's going to be some discussion with regard to the wording of the sentence to begin with. It would appear to him that the Commission should amend it to say bingo "games" instead of bingo "prizes," and then add the phrase "unless approved by the Commission." That way they can just come and ask for more games; the Commission can say yes or no and they don't go through the 90-day rule process amendment. **Director Bishop** said that would put it at the Commission level, but it would not require a WAC change. **Commissioner Heavey** said that was right and asked if that would be something that could work. **Ms. Winslow** said that as far as changing "prizes" to "games" she thought that might create some difficulty in that they have defined prizes in the package. Commissioner Heavey asked how it had been defined. **Ms. Winslow** said they have the main prize and the consolation prize and a bonus prize specifically defined. She thought that when they discuss three linked bingo prizes per day, they are actually referring to the main prize. **Commissioner Heavey** said that if they said "games" how would that change the definition of prizes. **Ms. Winslow** said that because this was the first time she had thought about it so she was just saying that it might be a potential problem, but she was not absolutely sure. **Director Bishop** asked what rule pertained to definitions. **Ms. Winslow** said 4d. Chairperson McLaughlin asked if they were talking about three games or three prizes a day. **Commissioner Heavey** said it was three games. Director Bishop said that the way he would read 4d is that they have a main prize, a consolation prize, and a bonus prize – that would say if you offered one of those, in a game, you would be through for the day. **Chairperson McLaughlin** and

Commissioner Heavey agreed. **Director Bishop** said he thought it should be “game” – “prizes in no more than three games”

Chairperson McLaughlin said there was a motion on the floor and she asked if there was an amendment.

Commissioner Heavey asked Commissioner Herbold if she wanted to discuss her ideas first and then if they make the changes, he would then offer his amendment. **Commissioner Herbold** said that when she reads that sentence, it has what she learned in grade school to be a double negative. It says “A bingo operator shall not be approved to offer more than one linked bingo game per session and no more. . .” and it should be “or more than” because by introducing the “no” there is a double negative which cancels it, so instead of “and no” it should say “or more than.”

Commissioner Heavey said that he would piggy-back his amendment on Commissioner Herbold's amendment to change “prizes” to “games” and put a “,” after “day” and say “unless approved by the Commission.” **Ms. Patjens** asked if they also needed to change both of the references to “linked bingo prize” because it is stated twice in that one sentence. **Commissioner Heavey** said yes. **Ms. Patjens** said it should say “a bingo operator shall not be approved to offer more than one linked bingo game per session or more than three linked bingo games per day, unless approved by the Commission.” **Commissioner Herbold** and **Commissioner Heavey** agreed that sounded perfect to them. **Chairperson McLaughlin** called for any other discussion on the amendment to the motion. She asked if everyone understood the amendment. She then called for a vote on the amendment.

Vote take; motion carried with five aye votes.

Chairperson McLaughlin said they shouldn't have voted without asking the public if they wished to speak to that amendment. She asked the audience if they wished to say anything. She said they had before them an amended motion. She opened it up for public testimony and asked if anyone wished to speak to the amended joint bingo prizes a through p. **Commissioner Heavey** said for the record, that was an amendment to proposed WAC 230-20-255 the first paragraph. **Chairperson McLaughlin** asked if they were talking about Item 4a. **Commissioner Heavey** said yes Item 4a. **Chairperson McLaughlin** again asked if anyone wished to speak to the amended motion. She said hearing none and if there's no more discussion from the Commission, she called for the vote.

Vote taken; motion carried with five aye votes.

RULES FOR DISCUSSION AND POSSIBLE FILING

TEMPORARY MORATORIUM ON NET RETURN REQUIREMENTS

Ms. Patjens said as she mentioned yesterday, this was listed on the agenda as being up for final action today. It is not up for final action today; it is up for discussion and possible filing and it is Item 5a. The rule was proposed by staff in conjunction with The Washington Civic and Charitable Gaming Association and it would authorize a temporary moratorium on compliance with the net return requirements. Yesterday Jackie Fischer, the program manager of the financial investigations and reporting section a little bit of the history of the net return requirements. She recalled that there was a bingo task force in 1995 with a report given to the Commission in June of 1996. The reason for the task force was that licensees had come to staff and said that they had had a decline in their net return and in the gross receipts that they had in the summer and spring of 1995. The current net return requirements were a result of that task force and there were also a variety of other rules that were changed as a result of the task force.

Ms. Patjens said, based on the rules, there was a process that was established at the end of 1996 on how the Commission would handle situations where an organization had not met the net return requirements. The process was essentially that if someone was within 2 percent of the net return requirements, they could come to the director and ask for a variance. If they were more than 2 percent out then they had to come before the

Commission and ask for relief. Since 1996, the Commission has had one case before them that was last September of 1997 and that was Big Brothers and Sisters of Whatcom County, an organization that was out of compliance by 2 percent. Otherwise, all of the other cases have been resolved by the organization typically being within at that 2 percent mark. In most of the cases, there were a total of about 25 cases that have been processed. Typically variances were granted because the organization had improved their net return over a six month period and by rule, if there was improvement in a six month period, that was considered prima facie evidence that they could meet the net return requirements. Four organizations agreed to go ahead and take the limitation that was set forth in the rules and then there were about five that closed business. In 1997 there were 11 bingo operations that closed and then there were two that were closed in 1998 and geographically these have really been all over the state. There were three businesses that closed down in this particular area, two in the Point Roberts and Blaine area, two in the Seattle area, one in Marysville, two in Spokane, one in Wenatchee, one in Kennewick and one in Walla Walla.

Ms. Patjens said that last month, John Beadle of Seattle Junior Hockey and the WCCGA stood up and was discussing how the third quarter receipts had really gone down compared to how third quarter had been in 1997. He reported that of the top five games, two were out of compliance for the quarter and he said that part of this was a decrease based on the house banked card rooms, so he did acknowledge that this could not be considered the sole reason for the decrease. In October, the staff did not have the quarterly activity reports to be able to come to the Commission and say, "Yes, what the organization is telling you is what the statistics are showing." And that is not to say that staff had any reason to disbelieve what they were saying, but those reports were not available. Those reports are now available. They were due at the end of October. What they do show is that for the top 43 bingo licensees, there was a drop comparing third quarter of 1998 to third quarter of 1997, a drop of \$1.4 million in gross receipts.

Ms. Patjens said yesterday a sheet was passed out which explained things that had changed from 1995 to current 1998. Derry Fries handed out some to the audience and was asked to save some for the commissioners who may not have received one. She briefly reviewed what had been going on since 1995. Eight tribal gaming facilities have opened, five of which opened in 1995, two in 1996 and one in 1998. Tribal casinos began offering electronic bingo games such as Mega Mania bingo, Rocket bingo, and recently Wild Ball bingo. There were 23 enhanced card rooms that opened with house banked games. She reminded them that if they thought that was not correct because there were 26 at the end of last month, it was because they were comparing what was happening up to the third quarter of the 1998.

Ms. Patjens said there also had been changes in Idaho's laws, Oregon's and Canada's policies as well. What this proposed rule would do would be to impose a moratorium on reducing licensed classes when a licensee could show a few things. One is that they have to notify the Commission that they want to participate in another study. They also have to outline the steps that they are taking to meet the current net return requirements and lastly, they must be within three percent of the net return requirements. Staff has already met with the industry once. They would see development of another task force and the moratorium would go through February 29, 2000. The staff recommends filing and for further discussion. She noted that it would be possible for this to become effective 30 days after a final vote was taken in January, so it would only need to be on the Commission agenda for two months, this month and January, as opposed to being on it for three months.

Ms. Patjens said they have received letters, including one from the Whatcom Crisis Services, which was handed out. She pointed out another one in their handout packets from Big Brothers and Big Sisters of Spokane County and one from Athletic Roundtable in Spokane. The organizations had sent them saying they could not be at the meeting but wanted the letters to be made part of the official record. Two of the letters support the rule. The letter from Big Brothers/Big Sisters recommended that there be no requirement on the net return requirement. Instead of having to be within 3 percent of where they needed to be, they seemed to be recommending that they could participate in it regardless of what their net return requirements were.

Commissioner Ludwig asked if the director can grant exemptions or waivers and if so, what was the basis for requesting emergency adoption given that authority of the director. **Ms. Patjens** said the director did have that authority and if they were to do this as an emergency rule instead, then they would have to show that there was going to be some type of public health or welfare effect by not adopting it as an emergency. She noted that there

are about eight cases that are projected to come to the Commission of licensees who would not be in compliance with the measurement period ending December 31, 1998. This rule would help those organizations out because it would be retroactive back to that month. It says that they could apply to be part of the study if they had a measurement period that ended December 31, 1998. **Commissioner Ludwig** said that given the fact that this rule was pending, he asked if the director do the same thing. **Ms. Patjens** said the director could do an across-the-board variance of up to 2 percent. What this would do would give relief to those people who would be within 3 percent.

Chairperson McLaughlin asked when the nonprofits would be offering their first linked bingo games. **Ms. Patjens** said the rules would become effective January 1 unless the Commission wants to amend the motion and have them become effective 30 days after filing, which would put it closer to being the middle of December instead of January 1. **Ms. Winslow** said the program wouldn't be ready to go by then.

Commissioner Herbold referred to some of the questions and comments she had made yesterday about looking at all of the rules as they pertain to the nonprofits and asked if this would be an appropriate time, instead of just focusing on this net return requirement and having a moratorium, to look at the whole group of rules that pose restrictions on the nonprofits, and come up with a more comprehensive plan to make their lives easier. **Director Bishop** said he thought so. He said it was time to go back and look at the whole thing. He said it would be a very comprehensive program because there are lots of rules. If they were to do such a thing he would welcome and encourage that a member of the Commission participate with the staff, if possible. He said a group would need to be formed to sit down over several meetings to work this out. This group should be made up of industry, staff, and commissioners. **Commissioner Herbold** said they might be assuming that the industry is interested in that. **Director Bishop** said he thought they would welcome it, but he was sure some of them would testify regarding this.

Chairperson McLaughlin asked if the same staff people work on permanent rules for enhanced card rooms and work on charitable bingo. **Director Bishop** said some of them are the same people – the ones who put together the agenda and work with the code reviser. Typically, the field staff involved would be some of the same. The rules and regulations of the nonprofits in this category have typically been with the licensing group and financial investigations. From that perspective, they would be different staff members. **Chairperson McLaughlin** asked if requiring this work now would slow up the permanent rules. **Director Bishop** said the people in FIU are an intricate part of the pilot program and the fact that they are having to do the licensing investigations for the new licensees that are coming into that program. **Commissioner Herbold** said this moratorium would extend to February, 2000, so by then they would have the permanent rules in place, so they might have a six-month period in there by then. She asked if they were anticipating June or July for the permanent rules, so they would have a period of time in there to do it. **Director Bishop** said there would be a window after that. He said he participated in two of these task forces before and it was his experience that the first several months were fact-finding, gathering of statistics and trying to do a little brainstorming to see what the directions should be. The real work gets down probably toward the last part.

Commissioner Forrest said it seems to him this would be distributing aspirin to an industry that really needs a new antibiotic. He asked if there was mechanism either tradition or formally set up by which the Commission can summarize this information and say they are reviewing the rules with an effort to enable the charities to continue to make their contribution. He said that if he has the feeling that a semi-disinterested voice like the Gambling Commission has some formal communication to the Governor and the Legislature and it might help. He said it seemed to him that unless there is some radical change that he does not foresee that these conditions are going to continue to get worse and he is supportive of what the group is discussing, but he would like to help give a push to legislative assistance. **Director Bishop** said the licensees as a group have a legislative committee and Commission staff met with them as directed mainly as a brain storming mechanism that staff's window for formal legislation with the Commission pushing them in that way has passed since they must go through the Governor's Office for any formal legislation from staff's perspective. He said Commissioner Forrest's idea would be an opportunity and if the Commission directs staff, should they come forward with legislation, they will help them and certainly talk to the Governor and the Legislature on the Commission's behalf. **Chairperson McLaughlin** asked if he needed a motion or could the Commission just suggest that staff do that. **Director Bishop** said any direction he received he would appreciate being from the group. **Chairperson McLaughlin** asked if any of the

commissioners did not want to send this message through Senator Margarita Prentice if the industry brings something before the Legislature. **Commissioner Ludwig** and **Commissioner Herbold** concurred that they would like to know what specifically they are urging the Legislature to do. **Commissioner Forrest** said let the Legislature know that this is a serious problem and that the Commission is doing what it can.

Senator Prentice said she wished she could be sure all would be well, but the letter they received from the Whatcom County Crisis Services referred to things they had no say-so over – such as what's been happening to the Canadian dollar and what the Canadians did; for example, they have three new tribal games up there. She said she agreed with Commissioner Forrest because the same thing jumped out at her only she was speaking in more radical terms. She thought they needed to take a comprehensive look at it and understand what they are doing. She said she didn't want to propose gimmicks or make it look as if they are doing something when they aren't. Sometimes the most simple things end of doing more harm than is intended. She said she knew they would be taking a solid look. This industry has a lot of legislative support and that is why their bills had gone through before. She has been listening and she has read the letters. She can't promise something she can't keep, but they will be looking at it and giving it a very serious look. **Chairperson McLaughlin** said what the Commission is being asked to do is find out what would be likely to happen if the industry took something to the Legislature, and would the Commission be supportive of it if it was a good idea. **Commissioner Heavey** said they would have to wait to see what it is.

Chairperson McLaughlin called for public testimony on this although not filed yet, they can discuss it.

Kevin Crum, speaking on behalf of the Washington Charitable and Civic Gaming Association, said they discussed at the last meeting the effects their industry was suffering lately from increased competition. It was suggested that they try to learn what those effects were. A number of the game organizations conducted surveys of their players to find out where their gross gaming dollar is going. He said if they look at some of the results of the other segments of gaming in the state, it is fairly obvious, but what their players told them, he said he could speak at their hall they had results that told them that their players are playing the Native American bingo machines which were alluded to earlier as the Mega Mania, Rocket bingo and Wild Ball. The conversion of the food and beverage stimulant industry into a private, for-profit commercial casino has also affected their players. They have lots of players or their spouses using the same discretionary income to visit those casinos and now their industry is worried about having to compete against the new tribal video lottery system.

Mr. Crum said after further discussions yesterday they believe it is apparent that the system used to measure compliance in the state needs to be looked at and they welcome the idea of a moratorium to give some relief to games that are having trouble meeting their net income requirements while they can study that process. He said their industry is more than willing to work closely with Commission staff and especially if there are commissioners available to help them on that over the next period. He said they realize the Commission staff are committed to other priorities and that it might be more toward the second half of 1999 before they can look at that, but the moratorium extends until the year 2000 and he thought that they can accomplish that during that period.

Mr. Crum said that at the same time they are pursuing remedies that they hope will help boost their industry, both legislative and rule change remedies. They have a legislative agenda per their organization which at this point is two pronged. They didn't want to do anything yet that was so radical without studying as adding bingo days and so on, but the two ideas they will be considering is 1) seeing if they can have an RCW modified to give them the ability to offer their players the same type of machines that were approved yesterday for the tribal lotteries because it is their belief that to do that it would have to be a legislative change, and 2) they will be pursuing tax relief and the RCW that allows for the local gaming tax. They will be pursuing a minimum. He said they would also be pursuing rule changes to allow machine gaming also, but they want to attack the problem from all angles so they can increase their chance of success.

Commissioner Ludwig asked why the industry would seek permission to use machines that were discussed yesterday as opposed to using Mega Mania or Rocket Bingo. **Mr. Crum** said it was for the same reason that the group that just obtained those machines, they're going to be getting rid of their Mega Mania machines and replacing them with their new slot machines, so they don't want to have their rejects and try to compete with what they just got. **Chairperson McLaughlin** said a letter was received last night that says the machines can only be

offered by one company. **Mr. Crum** said the main reason he came to speak before the Commission was if they look at the third quarter results that they were looking at this morning, there's 18 of the top 40 games that are out of compliance. The moratorium will allow for a 3 percent variance which puts that to 12 games that will still be out of compliance. It is the industries request that for the period of the moratorium, they change that 3 percent to a 5 percent variance. It will still leave some games out of compliance, but it will put back in games that are still returning significant amounts of revenue to their organization, but would be out of compliance with the 3 percent. They propose to amend the section 1b of the rule from 3 percent to 5 percent.

Commissioner Herbold asked if the 12 who would still be out of compliance, if they use the 3 percent, would they still have to shut down. **Director Bishop** said they wouldn't have to shut down, but the possibility would be that if they were down for that period, they would have to reduce their license level until they could demonstrate that they could at least get up to where the moratorium level was. That is the current system. Eventually, the industry says that if they're going along, their game is based on one level, the only way they can reduce it is by reducing games or sessions that in fact would probably be the death toll for them because that just pushes them further down and out of compliance curve as it currently is, so eventually it could lead to a shutdown by them.

Kevin Sherwood, North Shore Youth Soccer, said he is not currently a member of the WCCGA, so he is only speaking on behalf of himself and his organization. He passed around some additional statistics that he had brought. He said his biggest concern about the moratorium is not just the 5 percent. The 5 percent only applies to only part of the industry – not the industry as a whole. I may or may not fit into this, but if this whole process is going to be looked into, it should affect everybody. He doesn't think anyone should be penalized or forced to reduce their class license simply because they're struggling a little bit more than some of the other games. He called their attention to the comparisons that he passed around earlier shows the number of tribal casinos that have opened, the number of commercial casinos that they are competing with, and it's had an impact on the industry. What he tried to show is annual net revenues to the organizations that have been lost – the dollars and the attendance in just the last three years. He averaged '88 to '95 and then '96 to '98 when all the additional gambling came in. The list is only the top 40 and there are more than 400 licensees in the state of Washington. Out of the top 40 50 percent of these games have been impacted at one time or another over net return requirement.

Mr. Sherwood said the annual attendance for the games listed here has decreased by 469,000 players per year. The annual net revenue has decreased by over \$3 million to these organizations. He said there is a lot of resource time devoted to this and there are quite a few dollars and hours devoted to what he thinks are complicated and outdated requirements that could be better utilized. He feels strongly that if there is a moratorium on the industry, it shouldn't just be at 5 percent, because he might be 6 or 7 percent and he is not going to be protected. He might still be subject to reduction of license class. His records show that if he has to close a session – most of his players play two or more sessions in a row, so he has the potential of losing a player for two sessions and not just one. The other impact is on the employees and while he realizes that the nonprofits are not just for their benefit, there are a lot of single family people who work for \$8 per hour. If he cuts out one session a week that impacts that person which is \$200 a month. That's something that somebody at that wage level can't afford to lose. He said the biggest concern of their industry as a whole is that somebody can't just come in and buy the market. We all agree that people should make money for their cause. We disagree that it should only be a dollar. We think there are some reasonable numbers that can be looked at. He hopes they will look at the whole picture and keep every organization involved.

Commissioner Ludwig said the proposal was for three and there was a request to change it to five and Mr. Sherwood is saying just ignore that completely and give everybody a moratorium even if they're on the rocks. **Mr. Sherwood** said that he was saying that maybe the 5 percent may be a good number, but when he took over his game they were minus 18 percent. They ended up being 7.99 percent for the year, so he thinks as a manager he's done a good job. They wound up with \$310,000 net return to their organization, but he is out of compliance.

Director Bishop asked if they had done this type of analysis prior to starting the game. **Mr. Sherwood** said the game was already open. He said he assumed management control in June of last year, but when he took over, at that point in time the game was losing money, but was in a positive swing. **Director Bishop** said one of the prime factors involved in the competition of bingo games is when another large bingo game opens in an area, it

impacts every other game in the area, so it's not only the card rooms or the tribal casinos, but also the competition among the nonprofit organizations' own ranks. **Mr. Sherwood** said that even his game has had an impact on some other games in the market area. But he pointed out the 50 percent of the games are impacted by net returns which are really hard for anyone to beat. The other thing it doesn't allow – even though they don't want more competition – is with those requirements, it's virtually impossible for a new organization to even try and get into this market without a lot of money.

Clyde Bock, representing Sno King Bingo, said he has been in this process from the very beginning and has been in the bingo industry since '73, '74. When these rules were first put into place, there were some abuses within the industry that needed to be taken care of. He supports the 5 percent or even a little more so that it encompasses more nonprofits from the standpoint that there have been a considerable number of WACs that have been put into play to take care of some of these abuses that this rule was designed to do. He said if they go back and analyze those – such as inurements, excessive wages -- there's a fair number of WACs that now cover the same areas that this WAC was put into place to cover. He said it was important to remember to not leave the whole area untouched because that's now covered by some other WACs. That's why he can support a moratorium with a higher percentage than three.

John Beadle, Seattle Junior Hockey Association, handed around some information to the commissioners and said he is here as an individual licensee. Although his organization is not out of compliance, he is here to support the licensees that are out of compliance and also echo Kevin Crum's comments of the need for the moratorium. He said he served with Clyde Bock on the initial committee back in the early '80s and many WACs have been developed on gift certificates, the amount of times they can give a costume prize, et cetera that all have a play on net income, and so this rule is becoming antiquated. More important in his view they should be looking at, for example, the third quarter of '97 versus '98. As Mr. Crum indicated there's 18 out of 40 out of compliance pertaining to that quarter. Within one percent of being out of compliance is an additional nine of the 40. Now they are up to 27 out of 40 that are right on the verge. He thinks they are just entering the area of the tremendous decrease. He said he did not believe they are just on a slow pace. He thinks they are in a downward spiral. He believes the spiral just started this year. For his organization, in '94 and '95, they took a big hit and lost \$400,000 in net income. He said they have always been the biggest game in the state. They made \$1.4 million at that time and then they dropped to \$1 million even and stayed that way until '98 and then all of a sudden there was a sudden drop as the statistics show in just one quarter they were down \$55,000 in net income. He also made one-month comparison to go into October to show that it is not stabilizing. It's continuing down. If one applies – because they have less per sessions in the month of October in 1997, what it really indicated gross reduction in one month of \$85,000 which is significant. He said what was important is that no one can look into the crystal ball and develop a percentage – say it's three, four, five six, and say this is how much money you're supposed to make when there are so many outside influences, but they don't know the effect of the machines yet on their business. He feels that it was time for them to loosen up and not put a sanction on their net income.

Chairperson McLaughlin asked what he thinks bingo games will do for the nonprofits. **Mr. Beadle** said it's like a band aid and will help; however, it's not going to fix it. Since the last Commission meeting he has been visiting some casinos and he talked to different people who were playing Mega Mania up at the Tulalips and he asked them their real attraction was because at the same time they are playing Mega Mania, there's a little room with 45 Mega Mania machines and everyone of them are being used. He said he could hear the caller of the bingo hall co-located calling bingo and he asked three different people why they were not in playing regular bingo and playing Mega Mania and he got three different answers but they all said 1) because of the amount of the prize because they are linked and the prizes are bigger, 2) the speed of play, and 3) they can stop in and play 15 minutes, 30 minutes while they're going to the grocery store and leave and he said that was something to think about that the nonprofits do not have that ability to compete against them. **Chairperson McLaughlin** said that their organization provides a social day.

Bill Spencer, Spokane Big Brothers. He works with Don Kaufman, who could not be here today. He said Mr. Kaufman had sent a letter to all the commissioners and staff and he used their organization's game as an example of what's happening in eastern Washington, particularly since 1992. Their organization built a new facility in 1990 and it seats about 1,000 players. They had over 200,000 players in 1992. In 1998, they'll be lucky if they get 130,000 players which is over a 36 percent decrease. Many other games in eastern Washington have

experienced decreases. They are a weekend game and were probably hit harder from the other types of competition in the area than some of the weekday games. At least five games in the Spokane area have closed down in the last six years. They have been dealing with the slot machines longer than anyone and their continued expansion along with the video gaming all around them in eastern Washington has significantly impacted them.

Mr. Spencer said the Spokane and Colville Tribes now have over 1,200 slot machines throughout eastern Washington. The Coeur d'Alene Tribe just finished their new expansion and they now have 1,000 video pull tab machines. The Spokanes and Colvilles have the machines like the bally-type units on Wednesday at the hearing and those are the true slot machines that are in Nevada and some of the other large sites. In Idaho, there were some gaming changes in Idaho. Other locations that are affecting eastern Washington and Bonners Ferry, the Kootenai Tribe has 500, the Nez Perce Tribe in Lewiston has 500 and in Oregon the Wild Horse Casino has 500. This gives an idea of what's happening in eastern Washington and why the nonprofit numbers are going down. He said that in the house banked blackjack and card games, there's five major sites in Spokane County and they have seen a lot of their customers there playing those. With the vote yesterday, they are expecting about 850 of the new units to go in next year in eastern Washington, probably 425 in the Yakama Nation and 425 in the new Kalispel location, Airway Heights.

Mr. Spencer said they would support the 5 percent decrease at this point even though it is a band aid solution for them. They are out of compliance and the situation is growing worse day by day. He said it was a great program, they'd like to go on and they have put a lot of time and effort into their operation and gaming is very important to them in their fundraising.

Chairperson McLaughlin called for any further public comment; no one came forward.

Commissioner Ludwig moved to file the rule WAC 230-20-058 for further discussion; **Commissioner Forrest** seconded the motion.

Commissioner Heavey asked if the Commission was going to request the staff to change it to 5 percent as opposed to 3 percent. **Commissioner Ludwig** said on that issue, he thought they should take the staff's recommendation. **Director Bishop** said he had no problem with the 5 percent; however to keep everyone protected they would have to go to 17 percent which would be unrealistic. He said that those who were close but still out of compliance still had the option to come before the Commission to plead their case. **Commissioner Heavey** said he would suggest 5 percent and that if anybody exceeds that they can come to the Commission and ask for deviation. **Commissioner Forrest** said he would support that. **Chairperson McLaughlin** asked if Commissioner Ludwig would take that as a friendly amendment. **Commissioner Ludwig and Commissioner Forrest** both accepted the friendly amendment. **Commissioner Heavey** said he would also ask that the staff make a recommendation at that time so they get something more than just having sympathy for those who are having a rough time without analyzing all of the factors that might be causing the problem.

Ms. Winslow said that at the lower license levels, the licensees are only required to have an annual minimum net return of 2 percent and 4 percent, so the 5 percent actually could put them in a negative cash flow, so she assumed that the Commission would also want to consider that the licensees have a positive cash flow from the bingo operation if they go to the 5 percent. **Director Bishop** asked if that was not a part of this rule. He suggested that they bring it forward. **Ms. Winslow** said they could amend it at the next meeting but she just wanted to put that point on the record.

Director Bishop said that Ms. Patjens had given him a copy of the last task force report and the recommendations comply with what the commissioners were requiring out of today's meeting with the satellite being passed. He suggested the commissioners look over this report between now and the January meeting and they will be better prepared to address the whole issue.

Vote taken; motion carried with five votes.

Chairperson McLaughlin asked if the linked bingo was actually going to come from a satellite. **Director Bishop** said the technology will probably be from satellite. It could be done by phone lines if they were dedicated to protect the security. **Chairperson McLaughlin** asked if it is just within the state of Washington. **Director Bishop** said yes and it would not be linked with any games outside. **Chairperson McLaughlin** said she had heard from Oasis that they download their material out of another state. **Director Bishop** said that in their case they are licensed and so they have jurisdiction over that company, but not the operation of a game in another jurisdiction.

OTHER BUSINESS GENERAL DISCUSSION AND COMMENTS FROM THE PUBLIC

Chairperson McLaughlin called for other discussion.

Ric Newgard, WCCGA and Seattle Junior Hockey, thanked the Commission for the two rules they had passed today. They have been working on satellite bingo for three years. The industry also thanked Senator Schow for all his help over the past three years and he attended many meetings and through lots of hassles trying to get the bill passed.

Senator Schow thanked the Commission for passing the linked bingo rules. The charitable groups in the state really make a contribution to the community and address the problems of homelessness, abused children and similar problems. He said he is proud to have been a part in helping them. He said he hopes the Commission will keep the charities in the forefront so they can continue to provide those services.

Commissioner Heavey said that he has enjoyed working with Senator Schow for the last few years. He said he is an example of what dedication and hard work can do. He said he had not had the opportunity to work with a senator other than Senator Schow from "that side of the aisle," because for years that side of the isle sent the Commission a name and no body and now they have had a body they have worked with over the last few years who has contributed significantly to the work of the Gambling Commission and his dedication and hard work has had an impact on what the Commission has done and he knows that will lead to his further success in his life. He thanked him personally for what Senator Schow has done for Commissioner Heavey and said he would be honored to be counted among his friends.

Commissioner Forrest said he thinks Senator Schow knows they appreciate his efforts and wished him well, good luck, and Merry Christmas.

Chairperson McLaughlin said it has been her pleasure to have worked with Senator Schow and she will miss him and said he could come and visit. **Senator Schow** said that's a lot coming from a Democrat.

Chairperson McLaughlin adjourned the meeting and announced that the next meeting would be in Vancouver.

MEETING ADJOURNED

Minutes submitted to the Commission for approval,

*Susan D. Yeager
Executive Assistant*